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THE
REVISED STATUTES OF MONTANA,

ENACTED AT THE

REGULAR SESSION

OF THE

TWELFTH LEGISLATIVE ASSEMBLY OF MONTANA,

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EMBRACING

THE LAWS OF A GENERAL AND PERMANENT NATURE, IN FORCE AT THE
EXPIRATION OF THE ELEVENTH REGULAR SESSION OF THE
LEGISLATIVE ASSEMBLY, ON THE 21ST DAY OF
FEBRUARY, A. D. 1879.

TO WHICH ARE PREFIXED

THE CONSTITUTION OF THE UNITED STATES AND AMENDMENTS THERETO,
PROVISIONS OF THE REVISED STATUTES OF THE UNITED STATES COMMON TO ALL TERRITORIES, AND THOSE PARTICULARLY RELATING TO
MONTANA, AND SESSION LAWS OF THE UNITED STATES RELATING TO MONTANA ENACTED SUBSEQENT TO THE REVISION.

Published by Authority of the United States.

GEO. E. BOOS,
PUBLIC PRINTER AND BINDER,
HELENA, MONTANA.
1881

ERRATA IN REVISED STATUTES OF MONTANA.

Page 61, section 115, line 4, for *are* read *is*.
Page 66, section 149, line 6, for *on* read *in*.
Page 67, section 155, line 10, omit *it* before *is*.
Page 73, section 183, line 1, for *of* read *or*.
Page 73, section 184, line 9, for *and* read *any*.
Page 79, section 218, line 1, after *if* insert *a*.
Page 86, section 256, line 2, for *in* read *for*.
Page 89, section 270, line 11, before *and* insert *unless exceptions be made in the court below, for a defect in the finding.*
Page 90, section 274, line 11, for *pleading* read *pleadings*.
Page 92, section 281, line 11, for *rule* read *rules*.
Page 93, section 288, line 37, for *exceptions* read *exception*.
Page 95, section 291, line 2, for *of* read *or*.
Page 100, section 310, line 3, after *cases* insert *all*.
Page 104, section 329, line 1, for *subrogated* read *substituted*.
Page 105, section 332, line 6, for *so* read *as*.
Page 107, section 338, line 2, omit *the* before *several*.
Page 109, section 346, line 4, for *action* read *actions*.
Page 114, section 377, line 1, for *referee* read *referees*.
Page 117, section 391, line 4, omit *the* before *court*.
Page 123, section 425, line 1, insert *an* before *appeal*.
Page 123, section 425, line 13, for *opinions* read *opinion*.
Page 124, section 430, line 7, omit *an* before *appeal*.
Page 128, section 458, line 3, for *herein* read *therein*.
Page 130, section 465, line 3, for *direction* read *discretion*.
Page 131, section 474, line 1, for *Notice* read *Notices*.
Page 134, section 492, line 8, for *for* read *or*.
Page 135, section 502, lines 2 and 3, omit *is required*, after *additional security*.
Page 135, section 502, line 3, for *is* read *as*.
Page 135, section 503, line 2, for *of this* read *in this*.
Page 137, section 514, line 8, for *exercise* read *exercises*.
Page 141, section 541, line 1, for *attended* read *intended*.
Page 141, section 541, line 4, omit *in* before *the proceedings*.
Page 147, section 578, line 3, for *and* read *or*.
Page 154, section 612, line 2, for *determine* read *declare*.
Page 156, section 625, line 5, for *legislature* read *legislative*.
Page 156, section 625, line 10, for *legislature* read *legislative*.
Page 164, for *Sec.* 565 read *Sec.* 665,
Page 168, section 689, line 6, omit *other* before *business*.
Page 174, section 720, line 1, for *action* read *actions*.
Page 187, section 785, line 5, for *proceedings* read *proceeding*.
Page 196, section 20, line 6, for *thereto* read *hereto*.
Page 202, section 55, line 1, (*administrators* should read *administration*.)
Page 205, section 71, line 2, (57 should read 54.)
Page 210, section 106, line 5, for *delay* read *delays*,
Page 219, section 146, line 3, for *recorded* read *recorder*.
Page 220, section 150, line 1, for *no* read *not*.
Page 220, section 150, line 5, for *satisfactisfaction* read *satisfaction*.
Page 220, section 151, line 3, omit *and* before *that*.
Page 234, section 214, line 7, insert *such* before *sureties*.
Page 237, section 234, line 4, insert *such* before *security*.
Page 238, section 241, line 3, insert *the* before *contract*.
Page 239, section 251, line 8, for *claims* read *claim*.
Page 245, section 284, line 4, for *on* read *upon*.
Page 250, section 308, line 6, for *treasury* read *treasurer*.
Page 250, section 309, line 9, insert *and* before *whether*.
Page 254, section 332, line 4, for *the deceased* read *a deceased*.
Page 262, section 374, line 2. for *sum* read *same*.
Page 269, section 426, line 7, for *averse* read *adverse*.
Page 271 in head notes, for *section* 455 read *section* 465.
Page 274, section 465, line 1, for *bill* read *will*
Page 275, section 468, line 1, for *the testator* read *a testator*.
Page 277, section 487, line 1, for *divise* read *devise*.
Page 284, for *section* 545 read *section* 546.
Page 290, for *section* 15 read *section* 16.
Page 296, section 58, line 4, for *Under* read *Upon*.
Page 296, section 60, line 3, for *penaly* read *penalty*.

ERRATA REVISED STATUTES—*Continued.*

Page 298, for *section* 77 read *section* 67.
Page 304, section 115, line 1, omit *and* before *at.*
Page 314, section 196, line 1, for *arrigned* read *arraigned.*
Page 320, section 242, line 5, insert *the* before *orders.*
Page 322, section 262, line 4, after *attorney* insert *of the district.*
Page 322, section 263, line 16, for *by* read *in.*
Page 331, section 327, line 5, for *cases* read *actions.*
Page 372, section 90, line 2, for *form* read *for.*
Page 373, section 99, line 1, for *of species* read *or species.*
Page 378, section 118, line 5, for *find* read *fined.*
Page 383, section 144, line 2, for *lawful* read *unlawful.*
Page 412, section 43, line 3, for *counselor* read *counselors.*
Page 427, section 116, line 1, omit *If.*
Page 435, section 157, line 2, omit *the* before *lands.*
Page 441, section 194, line 9, insert *the* before *proof.*
Page 446, section 233, line 1, insert *That* before *the.*
Page 452, section 256, line 3, for *therefor* read *thereof.*
Page 467, section 307, line 5, for *and* read *or.*
Page 476, ... for *Sec.* 489 read *Sec.* 328.
Page 482, section 352, line 3, for *resident* read *residents.*
Page 486, section 376, line 12, for *bond* read *bonds.*
Page 496, section 430, line 2, for *has* read *is.*
Page 498, section 436, line 2, for *opinions* read *opinion.*
Page 498, section 439, line 7, insert *said* before *board.*
Page 513, section 505, line 2, insert *such* before *institution.*
Page 513, section 508, line 4, for *of* read *in.*
Page 518, section 526, line 1, for *delivery* read *deliverer.*
Page 518, section 529, line 1, for *and* read *any.*
Page 520, section 541, line 11, for *abstract* read *abstracts.*
Page 521, section 542, line 9, after *marshal* insert *and treasurer.*
Page 522, section 550, line 2, for *office* read *offices.*
Page 522, section 551, line 7, insert *the* before *notice.*
Page 525, section 565, line 4, for *imprisoned* read *imprisonment.*
Page 532, section 588, line 17, for *enter* read *entering.*
Page 532......................... Note.—for *May* 3, 1874, read *May* 3, 1873.
Page 560, section 725, line 1, insert *any* before *such.*
Page 561, section 727, line 3, insert *a* before *civil.*
Page 567, section 758, line 3, insert *the* before *laws.*
Page 604, section 954, line 2, for *so* read *to.*
Page 608, section 971, line 3, for *and* read *or.*
Page 611, section 984, line 2, for *representative* read *representatives.*
Page 611, section 985, lines 10 and 11 are transposed.
Page 622, section 1021, line 16, insert *the* before *said.*
Page 622, section 1021, line 40, for *tax* read *taxes.*
Page 624, section 1026,...........Note.—for *Feb.* 12th, read *Feb.* 10th.
Page 630, section 1054, line 2, for *commissioner* read *commissioners.*
Page 635, section 1074, line 13, insert *the* before *general.*
Page 648, section 1126, line 4, insert *school* after *teach.*
Page 667, section 1220, line 1, for *or* read *of.*

CERTIFICATE OF AUTHENTICATION.

TERRITORY OF MONTANA, }
SECRETAY'S OFFICE. } SS.

I, James H. Mills, Secretary of the Territory of Montana, do hereby certify that "The Revised Statutes of Montana," as contained in this volume, are a true and correct copy of an act entitled "An act to revise and codify the General Laws of the Territory of Montana in force at the expiration of the Eleventh Regular Session of the Legislative Asssembly, on the 21st day of February, A. D. 1879," as enacted at the Twelfth Regular Session of the Legislative Assembly of said Territory, begun January 10th, A. D. 1881, and ending February 23d, A. D. 1881, and held at Helena, the seat of government of said Territory, with the exception of corrections in punctuation, and omissions or substitute words inserted in brackets.

[SEAL]

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the Territory of Montana. Done at Helena, the seat of government of said Territory, this 22d day of March, A. D. 1881.

JAMES H. MILLS,
Secretary.

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CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SEC. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representative and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and including Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation of any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SEC. 3. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into the three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year, and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. 5. Each house shall be the judge of elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on the question of adjournment), shall be presented to the President of the United States; and before the same shall take effect shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8. The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by session of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution and government of the United States, or in any department or officer thereof.

SEC. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SEC. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net products of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and Control of Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States shall be appointed an elector.

[*The electors shall meet in their respective States, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President. But in choosing the President the vote shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the Vice-President.]

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*Annulled. See 12th amendment.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SEC. 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senate present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SEC. 3. He shall, from time to time, give to the Congress such information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors, and other public ministers; he shall take care that the laws are faithfully executed, and shall commission all the officers of the States.

SEC. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; [*between a State and citizens of another State;] between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens, or subjects.

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the congress may make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

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*Annulled. See 11th amendment.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SEC. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State under the laws thereof, escaping to another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SEC. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SEC. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them from invasion; and on application of the legislature, or of the executive (when the legislature can not be convened), against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the Congress: *Provided*, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this constitution between the States so ratifying the same.

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES.

ARTICLE I.

Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the malitia when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value at controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined by any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the president of the Senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other unconstitutional disability of the President.

The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of citizens twenty-one years of age in such State.

SEC. 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including the debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims, shall be held illegal and void.

SEC. 5. That Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

THE TERRITORIES.

REVISED STATUTES OF THE UNITED STATES.

TITLE XXIII. CHAPTER ONE.

PROVISIONS COMMON TO ALL THE TERRITORIES.

Right of Indians in person and property not impaired by this Title, &c.; boundaries, &c. Mont. 26 May, 1864.

SEC. 1839. Nothing in this Title shall be construed to impair the rights of person or property pertaining to the Indians in any Territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any Territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any Territory now or hereafter organized until such tribe signifies its assent to the President to be embraced within a particular Territory.

Authority to regulate Indians. Ibid.

SEC. 1840. Nor shall anything in this Title be construed to affect the authority of the United States to make any regulations respecting the Indians of any Territory, their lands, property, or rights, by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such Territory.

Executive power. Ibid.

SEC. 1841. The executive power of each Territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. He shall reside in the Territory for which he is appointed, and shall be commander-in-chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offences against the laws of the Territory for which he is appointed, and respites for offences against the laws of the United States, till the decision of the President can be made known thereon. He shall commission all officers who are appointed under the laws of such Territory, and shall take care that the laws thereof be faithfully executed.

Veto power.
Ibid.

SEC. 1842. Every bill which has passed the legislative assembly of any Territory shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house. If any bill is not returned by the governor within three days, Sundays excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly, by adjournment *sine die*, prevent its return, in which case it shall not be a law: [*Provided*, That so much of this section as provides for making any bill passed by the legislative assembly of a Territory a law, without the approval of the governor, shall not apply to the Territories of Utah and Arizona.]

Secretary.
Ibid.

SEC. 1843. There shall be appointed a secretary for each Territory, who shall reside within the Territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. In case of the death, removal, resignation, or absence of the governor from the Territory, the secretary shall execute all the powers and perform all the duties of governor during such vacancy or absence or until another governor is appointed and qualified.

Secretary's Duties.
Ibid.

SEC. 1844. The secretary shall record and preserve all the laws and proceedings of the legislative assembly, and all the acts and proceedings of the governor in the executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the President, and two copies of the laws, within like time, to the President of the Senate, and to the Speaker of the House of Representatives, for the use of Congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the President. He shall prepare the acts passed by the legislative assembly for publication, and furnish a copy thereof to the public printer of the Territory, within ten days after the passage of each act.

Salaries of governors and secretaries.
23 Jan., 1873.
1 May, 1876.

SEC. 1845. From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the governors of the several Territories shall be three thousand five hundred dollars, and the salaries of the secretaries shall be two thousand five hundred dollars each.

Legislative power.
Mont. 26 May, 1864; 3 March, 1869; 20 June, 1874.

SEC. 1846. The legislative power in each Territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The members of both branches of the legislative assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective legislative assemblies shall be biennial. Each legislative assembly shall fix by law the day of the commencement of its regular sessions. The members of the council and of the house of representatives shall reside in the district or county for which they are respectively elected.

Census and election.
Mont. 26 May, 1864.

SEC. 1847. Previous to the first election for members of the legislative assembly of a Territory in which Congress may hereafter provide a temporary government, the governor shall cause a census of the inhabitants and qualified voters of the several counties and districts in the Territory to be taken, by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable compensation for their services. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who superintend such election and the returns thereof, as the governor may direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts is entitled under the act providing such temporary government for the particular Territory. The persons having the highest number of legal votes in each of the districts for members of the council shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of that house; but in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor appoints.

Time and place of holding elections.
Ibid.

SEC. 1848. After such first election, however, the time, place, and manner of holding elections by the people in any newly-created Territory, as well as of holding all such elections in Territories now organized, shall be prescribed by the laws of each Territory.

SEC. 1849. The apportionment of representation, which the governor is authorized to make by section eighteen

Apportionment. Ibid.

hundred and forty-seven, in the case of a Territory hereafter erected by Congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the council and house of representatives, giving to each section of the Territory representation in the ratio of its population, except Indians not taxed; and thereafter in such new Territory, as well as in all Territories now organized, the legislative assemblies, respectively, may re-adjust and apportion the representation to the two houses thereof, among the several counties and districts, in such manner, from time to time, as they deem just and proper; but the number of either house, as authorized by law, shall not be increased.

Laws to be submitted to Congress. Ibid.

SEC. 1850. All laws passed by the legislative assembly and governor of any Territory, except in the Territories of Colorado, Dakota, Idaho, Montana, and Wyoming, shall be submitted to Congress, and, if disapproved, shall be null and of no effect.

Extent of legislative power. Ibid.

SEC. 1851. The legislative power of every Territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

Limit of time of sessions. 23 Jan., 1873.

SEC. 1852. The sessions of the legislative assemblies of the several Territories of the United States shall be limited to forty days' duration.

Compensation of members. 23 Jan., 1873.

SEC. 1853. The members of each branch of the several Territorial legislatures shall receive a compensation of six dollars per day during the sessions herein provided for, and they shall receive such mileage as now provided by law: *Provided,* That the president of the council and the speaker of the house of representatives shall each receive a compensation of ten dollars per day.

Members of legislature prohibited from holding certain offices. Mont. 26 May, 1864.

SEC. 1854. No member of the legislative assembly of any Territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly in any Territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of any Territory. The exception of postmasters shall not apply in the Territory of Washington.

Prohibition of extra compensation to certain officers.
23 Jan., 1873.

SEC. 1855. No law of any Territorial legislature shall be made or enforced by which the governor or secretary of a Territory, or the members or officers of any Territorial legislature are paid any compensation other than that provided by the laws of the United States.

Election of justices of the peace and militia officers.
Mont. 26 May, 1864.

SEC. 1856. Justices of the peace and all general officers of the militia in the several Territories shall be elected by the people in such manner as the respective legislatures may provide by law.

Other officers.
Ibid.

SEC. 1857. All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each Territory; and all other officers not herein otherwise provided for, the governor shall nominate, and by, and with the advice and consent of the legislative council of each Territory, shall appoint; but, in the first instance, where a new Territory is hereafter created by Congress, the governor alone may appoint all the officers referred to in this and the preceding section, and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly.

Vacancies how filled.
8 June, 1872.

SEC. 1858. In any of the Territories, whenever a vacancy happens from resignation or death, during the recess of the legislative council, in any office which, under the organic act of any Territory, is to be filled by appointment of the governor, by and with the advice and consent of the council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative council.

Qualifications of voting and holding office at first election.
Mont. 26 May, 1864.

SEC. 1859. Every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any Territory hereafter organized, and who are actual residents of such Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

At future elections.
Ibid.

SEC. 1860. At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each Territory; subject, nevertheless, to the following restrictions on the power of the legislative assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared, on oath, before a competent court of record, their intention to become such, and have taken an oath to support the Constitution and Government of the United States.

25 Jan., 1867.

Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color, or previous condition of servitude.

Third. No officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in any Territory, by reason of being on service therein, unless such Territory is, and has been for the period of six months, his permanent domicile.

Fourth. No person belonging to the army or navy shall be elected to or hold any civil office or appointment in any Territory.

Subordinate officers of legislature.
23 Jan., 1873.

SEC. 1861. The subordinate officers of each branch of every legislative assembly shall consist of one chief clerk, who shall receive a compensation of eight dollars per day, and of one assistant clerk, one enrolling clerk, one engrossing clerk, one sergeant-at-arms, one door-keeper, one messenger, and one watchman, who shall each receive a compensation of five dollars per day during the sessions, and no charge for a greater number of officers and attendants, or any larger per diem, shall be allowed or paid by the United States to any Territory.

Delegate to Congress.
Mont. 26 May, 1864.

SEC. 1862. Every Territory shall have the right to send a delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be giving accordingly. Every such delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

Time, places, and manner of electing Delegate.
Ibid.

SEC. 1863. The first election of a delegate in any Territory for which a temporary government is hereafter provided by Congress shall be held at the time and places and in the manner the governor of such Territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a delegate in organized Territories, such time, places, and manner of holding the election shall be prescribed by the law of each Territory. [See § 25.]

Supreme courts of Territories.
Ibid.

SEC. 1864. The supreme court of every Territory shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the Territory for which they are respectively appointed.

Judicial districts and courts.
Ibid.

SEC. 1865. Every Territory shall be divided into three judicial districts; and a district court shall be held in each district of the Territory by one of the justices of the supreme court, at such time and place as may be prescribed by law; and each judge, after assignment, shall reside in the district to which he is assigned.

Jurisdiction of courts.
Ibid. 7 April, 1874.

Sec. 1866. The jurisdiction, both appellate and original, of the courts provided for in section nineteen hundred and seven and nineteen hundred and eight, shall be limited by law.

Jurisdiction of justices of the peace.
Ibid.

Sec. 1867. No justice of the peace in any Territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

Chancery and common law jurisdiction.
Ibid.

Sec. 1868. The supreme court and the district courts, respectively, of every territory, shall possess chancery as well as common law jurisdiction.

Appellate jurisdiction of supreme court.
Ibid.

Sec. 1869. Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the district courts to the supreme court of all the Territories, respectively, under such regulation as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in that court.

Clerk of Supreme Court.
Mont. 26 May, 1864.

Sec. 1870. The supreme court of each Territory, shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

Clerk of district court.
Ibid.

Sec. 1871. Each judge of the supreme court of the respective Territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

Register in chancery; residence and office
Ibid.

Sec. 1872. Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held.

Judicial districts; how defined.
Ibid.

Sec. 1873. Temporarily, and until otherwise provided by law, the governor of every Territory which may be thereafter established shall define, by proclamation, the judicial districts of such Territory, and assign the judges appointed for such Territory to the several districts, as well as fix the times and places for holding courts in the respective counties or sub-divisions of each judicial district.

Judges of supreme court to hear certain causes.
Ibid.

Sec. 1874. The judges of the supreme court of each Territory are authorized to hold court within their respective districts, in the counties wherein, by the laws of the Territory, courts have been or may be established, for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the Territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

SEC. 1875. There shall be appointed in each Territory a person learned in the law, to act as attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

District attorneys.
Ibid.

SEC. 1876. There shall be appointed a marshal for each Territory. He shall execute all process issuing from the Territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law on the marshals for the several judicial districts of the United States. He shall hold his office for four years and until his successor is appointed and qualified, unless sooner removed by the President.

Marshals.
Ibid.

SEC. 1877. The governor, secretary, chief justice and associate justices, attorney, and marshal of every Territory shall be nominated and, by and with the advice and consent of the Senate, appointed by the President.

Appointment of governor, &c.
Ibid.

SEC. 1878. The governor and secretary of each territory shall, before they act as such, respectively take an oath before the district judge, or some justice of the peace in the limits of the Territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the Chief Justice or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers appointed for any Territory, before they act as such, shall take a like oath before the governor or secretary, or some judge or justice of the peace of the Territory who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as above directed; but after the first qualification of the officers herein specified in the case of a new Territory, as well as in all organized Territories, the like oath shall be taken, certified and recorded in such manner and form as may be prescribed by the law of each Territory.

Oath of office; how qualified.
Ibid.
1 Mar. 1876.

SEC. 1879. The annual salary of the chief justice and associate justices of all the Territories now organized shall be three thousand dollars each.

Salaries of justices.
17 June, 1870.

SEC. 1880. The salary of the attorney of the United States for each Territory shall be at the rate of two hundred and fifty dollars annually.

Salary of attorney.
Mont. 26 May, 1864.

SEC. 1881. The salary of the marshal of the United States for each Territory shall be at the rate of two hundred dollars a year.

Salary of marshal.
Ibid.

When salaries to be paid, &c.
Ibid.

SEC. 1882. The salaries provided for in this Title, to be paid to the governor, secretary, chief justice and associate justices, district attorney, and marshal of the several Territories, shall be paid quarter-yearly at the treasury of the United States.

Fees of clerks, &c.
23 June, 1874.

SEC. 1883. The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers, in the Territories of the United States, shall be the same for similar services by such persons as prescribed in chapter sixteen, title "THE JUDICIARY," and no other compensation shall be taxed or allowed.

Salary not to be paid when officer is absent.
Mont. 26 May, 1864.

SEC. 1884. When any officer of a Territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the President, who shall officially certify his opinion of such cause to the proper accounting officer of the treasury, to be filed in his office.

Seat of government in a new Territory.
Ibid.

SEC. 1885. The legislative assembly of every Territory hereafter organized shall hold its first session at such time and place in the Territory as the governor thereof shall appoint and direct; and at the first session of the legislative assembly, or as soon thereafter as it may be deemed expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for the Territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the governor and legislative assembly.

Accounts of the Territories; no payments unless approved by Congress.
Mont. 26 May, 1864.

SEC. 1886. All accounts for disbursements, in the Territories of the United States, of money appropriated by Congress for the support of government therein, shall be settled and adjusted at the Treasury Department; and no act, resolution or order of the legislature of any Territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the Treasury. No payment shall be made or allowed, unless the Secretary of the Treasury has estimated therefor and the object been approved by Congress. No session of the legislature of a Territory shall be held until the appropriation for its expenses has been made.

Limitation on expenses of printing.
8 May, 1872.
19 June, 1878.

SEC. 1887. Hereafter no expense for printing, exceeding four thousand dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the Territories.

Limitation on expenses of legislature.
Mont. 26 May, 1864.

SEC. 1888. No legislative assembly of a Territory shall, in any instance, or under any pretext, exceed the amount appropriated by Congress for its annual expenses.

SEC. 1889. The legislative assemblies of the several Territories shall not grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable, or scientific association.

Legislatures not to grant special charters.
2 March, 1867.
10 June, 1872.

SEC. 1890. No corporation or association for religious or charitable purposes shall acquire or hold real estate in any Territory, during the existence of the Territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

Limitation on right of religious corporations to hold real estate.
Mont. 26 May, 1864.

SEC. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States.

Constitution and laws of the United States made applicable to all the Territories.
Mont. 26 May, 1864.

SEC. 1892. Any penitentiary which has been, or may hereafter be, erected by the United States in an organized Territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the Territory or district in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming, and Colorado.

Penitentiaries.
10 Jan., 1871.

SEC. 1893. The Attorney General of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the Attorney General.

Rules for their government.
10 Jan., 1871.

SEC. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offences committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

Payment of marshals, &c., and of expenses of subsistence, &c., of offenders.
Ibid.

SEC. 1895. Any person convicted by a court of competent jurisdiction in a Territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the

Imprisonment in penitentiaries.
Ibid.

cost of such Territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offence against the laws of the United States.

CHAPTER TWO.

OF PROVISIONS CONCERNING PARTICULAR ORGANIZED TERRITORIES—SECTIONS RELATING TO THE TERRITORY OF MONTANA.

Boundaries and establishment of Montana.
26 May, 1864.

SEC. 1903. All that part of the territory of the United States included within the following limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west, on the forty-fifth degree of latitude, to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south, along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky Mountains; thence following the crest of the Rocky Mountains northward till its intersection with the Bitter Root Mountains; thence northward, along the crest of the Bitter Root Mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward, along that boundary line, to the twenty-seventh degree of longitude west from Washington; thence southward, along the twenty-seventh degree of longitude, to the place of beginning, is created into a temporary government by the name of the Territory of Montana.

Delegate to Congress from Montana must be a citizen of the United States.
Ibid.

SEC. 1906. The delegate to the House of Representatives from each of the Territories of Washington, Idaho, and Montana, must be a citizen of the United States.

SEC. 1907. The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana, and Wyoming, shall be vested in a supreme court, district courts, probate courts, and in justices of the peace.

The judicial power—how vested in Montana.

SEC. 1909. Writs of error and appeals from the final decisions of the supreme court of either of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, shall be allowed to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the supreme courts created by this Title, or of any judge thereof, or of the district courts created by this Title, or of any judge thereof, upon writs of *habeas corpus* involving the question of personal freedom.

Writs of error to United States Supreme Court.
Ibid. 23 June, 1874.

SEC. 1910. Each of the district courts in the Territories mentioned in the preceding section shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of the respective district courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such Constitution and laws; but writs of error and appeals in all such cases may be had to the supreme court of each Territory, as in other cases.

Jurisdiction of district courts under Constitution, &c.
Ibid.

SEC. 1914. The judges of the supreme courts of the Territories of Idaho and Montana, or a majority of them, shall, when assembled at their respective seats of government, define the judicial districts of each of such Territories, and assign the judges who may be appointed for each of such Territories to the several districts; and shall also fix the times and places for holding court in the several counties or sub-divisions in each of such judicial districts, and alter the times and places of holding the courts, as to them may seem proper and convenient; but not less than two terms a year shall be held at each place of holding court in the Territory of Montana.

Judges of supreme court in Idaho and Montana to define judicial districts, &c.
Mont. 2 Mar., 1867.

SEC. 1922. The councils of New Mexico and Utah shall each consist of thirteen members, and the house of representatives of twenty-six members. The council of Washington Territory shall consist of nine members, and the house of representatives of eighteen members, which may be increased to thirty. The councils of Colorado and Dakota shall each consist of nine members, which may be increased to thirteen, and the house of representatives of thirteen members, which may be increased to twenty-six. The council of Arizona shall consist of

Number of council and house of representatives in each Territory.
Mont. 26 May, 1864.
19 June, 1878.

nine members, and the house of representatives of eighteen members. The councils of Idaho and Montana shall each consist of seven members, which may be increased to thirteen, and the house of representatives of thirteen members, which may be increased to twenty-six. The council of Wyoming shall consist of nine members, which may be increased to thirteen, and the house of representatives of thirteen members, which may be increased to twenty-seven.

Extra sessions legislative assembly in Montana.
Mont. 26 May, 1864.

SEC. 1923. In each of the Territories of Washington, Idaho, and Montana, the governor shall have power to call the legislative assembly together by proclamation, on an extraordinary occasion, at any time.

Jurisdiction of justices of the peace in New Mexico and other Territories.
Ibid.

SEC. 1926. Justices of the peace, in the Territories of New Mexico, Utah, Washington, Dakota, Idaho, Montana, and Wyoming, shall not have jurisdiction of any matter in controversy where the debt or sum claimed exceeds one hundred dollars.

Jurisdiction of probate courts in Montana.
2 March, 1867.

SEC. 1932. The probate courts of the Territory of Montana, in their respective counties, in addition to their probate jurisdiction, are authorized to hear and determine civil causes wherein the damage or debt claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the Territory as do not require the intervention of a grand jury; but they shall not have jurisdiction of any matter in controversy when the title or right to the peaceable possession of land may be in dispute, or of chancery or divorce causes; and in all cases an appeal may be taken from any order, judgment or decree of the probate courts to the district court.

Contingent expenses of certain Territories.
Mont. 26 May, 1864.

SEC. 1935. There shall be appropriated, annually, one thousand dollars, to be expended by the respective governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, including the salary of the clerk in the executive departments of those Territories.

Control of penitentiaries in Montana, Idaho, &c., transferred to said Territories.
24 Jan., 1873.

SEC. 1936. The care and custody of the penitentiaries in Montana, Idaho, Wyoming, and Colorado, and the personal property thereunto belonging, and the use and occupation thereof, are transferred to such Territories, respectively, until otherwise ordered by the Attorney General; but the legal title to such penitentiaries and the property shall continue to vest in the United States.

Expenses of maintenance of prisoners to be paid from judiciary fund.
Ibid.
20 June, 1874.

SEC. 1937. The Territories named in the preceding section shall keep and maintain, in the penitentiaries transferred to their custody and control, all persons convicted in such Territories of violations of the laws of the United States, and sentenced to imprisonment therefor, and all persons held to answer for alleged violations of the laws of the United States in such Territories, at the rate and price, to be paid by the United States out of the judiciary fund, of one dollar per day for each person so imprisoned.

Legislative expenses in Washington, Idado, and Montana.
Mont. 26 May, 1864.

Sec. 1940. There shall be appropriated, respectively, for the Territories of Washington, Idaho, and Montana, annually, a sufficient sum, to be expended by the secretary of each Territory herein named upon an estimate to be made by the Secretary of the Treasury, to defray the expenses of the legislative assembly and other incidental expenses. The governor and secretary of each Territory above specified shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury, and shall, semi-annually, account to such Secretary for the manner in which such sums of money have been expended.

No payment of salaries in certain Territories until officers enter on their duties.
Ibid.

Sec. 1941. No payment of salary shall be made to the governor, secretary, chief justice, and associate justices of Washington, Idaho and Montana Territories until such officers have entered upon the duties of their respective appointments.

Mileage in Idaho and Montana.
Ibid.

Sec. 1943. The members of the legislative assembly of Idaho and Montana Territories shall each receive four dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according to the nearest usually traveled route.

Seat of government; how changed in Idaho and Montana.
Ibid.

Sec. 1945. The seat of government, when once fixed by the governor and legislative assembly of Idaho and Montana, respectively, shall not be at any time changed except by an act of such assembly for each Territory, respectively, duly passed and approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

School lands in certain Territories.
Ibid.

Sec. 1946. Sections numbered sixteen and thirty-six, in each township of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming shall be reserved for the purpose of being applied to schools in the several Territories herein named, and in the States and Territories hereafter to be erected out of the same.

Disbursing officers in Washington, Idaho, and Montana to give security.
Ibid.

Sec. 1951. All officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territories of Washington, Idaho, and Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be intrusted to them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe.

SESSION LAWS OF CONGRESS

Relating to Government in Montana.

ENACTED SUBSEQUENT TO THE REVISION.

FORTY-THIRD CONGRESS. SESSION I. CHAPTER 80.—An act concerning the practice in Territorial courts, and appeals therefrom.

Preamble.

WHEREAS, by the organic acts establishing several of the Territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts having been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said Territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said organic acts respectively: therefore,

Common law and chancery jurisdiction of Territorial courts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be necessary in any of the courts of the several Territories of the United States to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said Territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all cases, whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be, and the same are hereby, validated and confirmed: *Provided,* That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law.

Trial by jury.

Appellate jurisdiction of Supreme Court of United States; how exercised.

SEC. 2. That the appellate jurisdiction of the Supreme Court of the United States over the judgments and decrees of said Territorial courts in cases of trial by jury shall be exercised by writ of error, and in all other cases by appeal, according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have prescribed or may hereafter prescribe: *Provided,* That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court, together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said Supreme Court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal: *And provided further*, That the appellate may make any order in any case heretofore appealed, which may be necessary to save the rights of the parties; and that this act shall not apply to cases now pending in the Supreme Court of the United States where the record has already been filed.

Proceedings on appeal.

Proviso.

Approved April 7, 1874.

IBID. CHAP. 332.—An act to amend the act entitled "An act transferring the control of certain Territorial penitentiaries to the several Territories in which the same are located," approved January twenty-fourth, eighteen hundred and seventy-three.

Penitentiaries in Montana, Idaho, and Wyoming Territories.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act transferring the control of certain Territorial penitentiaries to the several Territories in which the same are located," approved January twenty-fourth, eighteen hundred and seventy-three, be and the same is hereby amended by striking out the words Montana, Idaho, and Wyoming, wherever the same occur in said act, and the said act shall hereafter have no applicability to the Territories of Montana, Idaho, and Wyoming.

To continue under control of United States marshals.

SEC. 2. That the penitentiaries in the Territories of Montana, Idaho and Wyoming shall continue under the care and control of the marshal of the United States for said Territories, under and pursuant to the provisions of the act entitled "An act in relation to certain Territorial penitentiaries," approved January tenth, eighteen hundred and seventy-one; which said last mentioned act is hereby revived and re-enacted so far as the same applies to the Territories of Montana, Idaho and Wyoming.

Approved June 20, 1874.

22 June, 1874.

President to approve call for extraordinary sessions.

IBID. CHAP. 388. EXTRACT. * * * But hereafter no extraordinary session of the legislature of any Territory, wherever the same is now authorized by law, shall be called until the reasons for the same have been presented to the President of the United States, and his approval thereof has been duly given.

FORTY-THIRD CONGRESS. SESSION II, CHAPTER 114. An act to protect all citizens in their civil and legal rights.

Preamble.

WHEREAS, it is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealing with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law; therefore,

Equal enjoyment of inns, public conveyances, theatres, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

Forfeit to person aggrieved by denial of equal enjoyment of inns, &c.

Punishment for denying, &c.

Election of remedies.

Effect of recoveries.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offence, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall also, for every such offence, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided,* That all persons may elect to sue for the penalty aforesaid, or to proceed under their rights at common law and by State statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings, either under this act or the criminal law of any State: *And provided further,* That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively.

Jurisdiction of courts under this act.

Duty of district attorneys, marshals, and commissioners, under this act.

SEC. 3. That the district and circuit courts of the United States shall have, exclusively of the courts of the several States, cognizance of all crimes and offences against, and violations of the provisions of this act; and actions for the penalty given by the preceding section may be prosecuted in the Territorial, district, or circuit courts of the United States wherever the defendant may be found, without regard to the other party; and the district attorneys, marshals and deputy marshals of the United States, and commissioners appointed by the circuit and Territorial courts of the United States, with powers of arresting and imprisoning or bailing offenders against the laws of the United States, are hereby specially authorized and required to institute proceedings against every person who shall violate the provisions of this act, and cause him to be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States, or Territorial court, as by law has cognizance of the offence, except in respect of the right of action accruing to the person aggrieved; and such district attorneys shall cause such proceedings to be prosecuted to their termination as in other cases: *Provided*, That nothing contained in this section shall be construed to deny or defeat any right of civil action accruing to any person, whether by reason of this act or otherwise; and any district attorney who shall willfully fail to institute and prosecute the proceedings herein required, shall, for every such offence, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action of debt, with full costs; and shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand nor more than five thousand dollars: *And provided further*, That a judgment for the penalty in favor of the party aggrieved, against any such district attorney, or a judgment upon an indictment against any such district attorney, shall be a bar to either prosecution respectively.

Right of civil action not affected.

Failure of district attorney to prosecute.

Effect of judgment against district attorney.

SEC. 4. That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars.

Exclusion from service as juror.

Penalty for excluding, &c.

SEC. 5. That all cases arising under the provisions of this act in the courts of the United States shall be reviewable by the Supreme Court of the United States without regard to the sum in controversy, under the same provisions and regulations as are now provided by law for the review of other causes in said court.

Review in Supreme Court.

Approved March 1, 1875.

FORTY-FOURTH CONGRESS. SESSION I. CHAP. 88. EXTRACT. * * * * And hereafter payment of salaries of all officers of the Territories of the United States appointed by the President shall commence only when the person appointed to any such office shall take the proper oath, and shall enter upon the duties of such office in such Territory; and said oath shall hereafter be administered in the Territory in which such office is held.

Salaries of Territorial officers, when to commence.

Oaths, where administered. 1 May, 1876.

IBID. CHAP. 287. EXTRACT. Territory of Montana: * * * * * *Provided*, That the next legislative assembly shall convene at the seat of government of the Territory on the second Monday of January, eighteen hundred and seventy-seven, and biennially thereafter.

Sessions of legislature. 15 Aug., 1876.

FORTY-FOURTH CONGRESS. SESSION II. CHAP. 107.

Desert lands may be purchased.

Declaration.

3 March, 1877.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such," and upon payment of twenty-five cents per acre, to file a declaration under oath with the register and receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section, by conducting water upon the same, within the period of three years thereafter: *Provided, however*, That the right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon *bona fide* prior appropriation: And such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation: And all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes, subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him: *Provided*, That no person shall be permitted to enter more than one tract of land, and not to exceed six hundred and forty acres, which shall be in compact form.

Right to use water.

Water on public lands to be free.

Contents of declaration.

Perfection of title.

Limit to quantity of land purchasable.

Desert lands defined.

SEC. 2. That all lands, exclusive of timber lands and mineral lands, which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated.

Localities in which act to apply.

SEC. 3. This act shall only apply to and take effect in the States of California, Oregon and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subjected to the decision and regulation of the commissioner of the General Land Office.

Accused persons may testify.
16 Mch., 1878.

FORTY-FIFTH CONGRESS. SESSION II. CHAP. 37. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offences, and misdemeanors, in the United States courts, Territorial courts, and courts-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person charged shall, at his own request, but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him.

Wood cut on unsurveyed land.
30 April, 1878.

IBID. CHAP. 76. EXTRACT. * * * * * * *And provided further,* That where wood and timber lands in the Territories of the United States are not surveyed and offered for sale in proper sub-divisions, convenient of access, no money herein appropriated shall be used to collect any charge for wood or timber cut on the public lands in the Territories of the United States, for the use of actual settlers in the Territories, and not for export from the Territories of the United States where the timber grew: *And provided further,* That if any timber cut on the public lands shall be exported from the Territories of the United States, it shall be liable to seizure by the United States authority wherever found.

Timber and mineral lands may be taken for certain purposes.
3 June, 1878.

IBID. CHAP. 150. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all citizens of the United States and other persons, *bona fide* residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time *bona fide* residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided,* The provisions of this act shall not extend to railroad corporations.

Proviso.

Taking, &c., for unauthorized purposes.

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.

Penalty.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

Municipal corporations in Territories. 8 June, 1878. Sec. 1889, R. S., page 133, construed.

IBID. CHAP. 168. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the words "the legislative assemblies of the several Territories shall not grant private charters or especial privileges," in section eighteen hundred and eighty-nine of the Revised Statutes of the United States, shall not be construed as prohibiting the legislative assemblies of the several Territories of the United States from creating towns, cities, or other municipal corporations, and providing for the government of the same, and conferring upon them the corporate powers and privileges necessary to their local administration, by either general or special acts; and that all general and special acts of such legislative assemblies heretofore passed creating and providing for the government of towns, cities, or other municipal corporations, and conferring such rights, powers and privileges upon the same, as were necessary to their local administration, be, and the same are hereby, ratified and confirmed and declared to be valid, any law to the contrary notwithstanding, subject, however, to amendment or repeal hereafter by such Territorial assemblies. But nothing herein shall have the effect to create any private right, except that of holding and executing municipal offices, or to divest any such right, or to make valid or invalid any contract or obligation heretofore made by or on behalf of any such town, city or other municipal corporation to incur hereafter any debt or obligation other than such as shall be necessary to the administration of its internal affairs.

Private rights.

Contracts.

Corporation debts.

Councils and Houses of Representatives in Territories. 19 June, 1878.

IBID. CHAP. 329. EXTRACT. * * * * * * * * That from and after the adjournment of the next session of the several Territorial legislatures the council of each of the Territories of the United States shall not exceed twelve members, and the house of representatives of each shall not exceed twenty-four members, and the members of each branch of the said several legislatures shall receive a compensation of four dollars per day each during the sessions provided by law, and shall

Number.

Compensation.

receive such mileage as the law provides; and the president of the council and the speaker of the house of representatives shall each receive six dollars per day for the same time. And the several legislatures at their next sessions are directed to divide their respective Territories into as many council and representative districts as they desire, which districts shall be as nearly equal as practicable, taking into consideration population, except "Indians not taxed:" *Provided*, The number of council districts shall not exceed twelve, and the representative districts shall not exceed twenty-four in any one of said Territories, and all parts of sections eighteen hundred and forty-seven, eighteen hundred and forty-nine, eighteen hundred and fifty-three, and nineteen hundred and twenty-two of the Revised Statutes of the United States in conflict with the provisions herein are repealed.

Districts.

Proviso.

That the subordinate officers of each branch of said Territorial legislatures shall consist of one chief clerk, who shall receive a compensation of six dollars per day; one enrolling and engrossing clerk, at five dollars per day; sergeant-at-arms and door-keeper, at five dollars per day; one messenger and watchman, at four dollars per day each; and one chaplain, at one dollar and fifty cents per day. Said sums shall be paid only during the sessions of said legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any Territory. And section eighteen hundred and sixty-one of the Revised Statutes is hereby repealed, and this substituted in lieu thereof: *Provided*, That for the performance of all official duties imposed by the Territorial legislatures, and not provided for in the organic act, the secretaries of the Territories respectively shall be allowed such fees as may be fixed by the Territorial legislatures. And in no case shall the expenditure for public printing in any of the Territories exceed the sum of two thousand five hundred dollars for any one year.

Officers of legislatures. Salaries.

Secretary's fees.

Printing.

IBID. CHAP. 362. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the right of way through the public lands of the United States, and other privileges heretofore granted by law to the Utah and Northern Railroad Company, are hereby modified and regranted so as to enable the Utah and Northern Railway Company and its assigns to build their road by the way of Marsh Valley, Portneuf River and Snake River Valley, instead of by the way of Soda Springs and Snake River Valley, as originally granted.

Utah and Northern Railway Company. 20 June, 1878.

Right of way modified.

SEC. 2. And said company is hereby made a railway corporation in the Territories of Utah, Idaho, and Montana, under the same conditions and limitations and with the same rights and privileges that it now has and

To be a corporation in Utah, Idaho, and Montana.

enjoys under its articles of incorporation: *Provided,* That said corporation shall at all times hereafter be subject to all the laws and regulations in relation to railroads of the United States or of any Territory or State through which it may pass. And suits against said corporation may be instituted in the courts of said Territories or either of them having jurisdiction by the laws of such Territory.

Proviso.

Suits.

Amendments.

SEC. 3. Congress may at any time add to, alter, amend or repeal this act.

Women admitted to practice in United States Supreme Court.

15th Feb., 1879.

FORTY-FIFTH CONGRESS. SESSION III. CHAP. 81. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any woman who shall have been a member of the bar of the highest court of any State or Territory or of the Supreme Court of the District of Columbia for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practice before the Supreme Court of the United States.

June 27, 1879.

Territorial legislatures.

1878, ch. 329, 20 Stat., 193.

Limitation of effect.

FORTY-SIXTH CONGRESS. SESSION I. CHAPTER 40. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and seventy nine, and for other purposes," approved June nineteenth, eighteen hundred and seventy-eight, pertaining to government in the several Territories of the United States, shall not be so construed as to impair or shorten the tenure of office of any member of such legislative assemblies until the redistricting and reapportionment of such Territories as is therein provided, nor until at the next regular election thereafter the twelve members of the council and twenty-four members of the house of representatives of such Territories have been elected and their term of office begun.

Approved, June 27, 1879.

April 16, 1880.

Justices of the peace in the Territories.

Filling vacancies.

Proviso.

FORTY-SIXTH CONGRESS. SESSION II. CHAPTER 56. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That when, from any cause, there shall be a vacancy in the office of justice of the peace in any of the Territories of the United States, it shall be lawful to fill such vacancy by appointment or election, in such manner as has been or may be provided by the governor and legislative assembly of such Territory: *Provided,* That such appointee, or person elected to fill such vacancy, shall hold office only until his successor shall be regularly elected and qualified as provided by law.

Repeal provisions.

SEC. 2. That all laws and parts of laws in conflict with the provisions of this act be, and the same are hereby, repealed.

June 3, 1880.

IBID. CHAP. 119. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the governor, and the speaker of the house of representatives and the president of the council during the last session of the legislature, in the Territories of Montana, Idaho, and Wyoming, be, and they are hereby, authorized and empowered to act as a board of apportionment in their respective Territories; and when assembled at the capitals of their respective Territories, they, or a majority of them, shall reapportion the members of the council and house of representatives in their respective Territories upon the basis of the population as shown by the returns of the census for the year eighteen hundred and eighty, excluding Indians, and shall make such apportionment strictly in accordance with said census returns, allotting members of each house of the legislative assembly to the different sections of their respective Territories, *pro rata,* as nearly as practicable, according to the population, and to that end may apportion, when necessary, in joint council, districts.

Reapportionment of members of legislatures of Territories of Montana, Idaho, Wyoming, on basis of census of 1880.

Election.

SEC. 2. That the reapportionment so made by said boards shall be forthwith certified to by the members, or a majority thereof, making the same, and filed in the office of the secretary of the Territory; and within ten days thereafter the governor shall issue his proclamation for an election of such members of the legislature so apportioned as aforesaid, specifying in such proclamation the apportionment so made to the different sections, and which election shall be held at the time and places as provided by law, and the returns to be canvassed as provided by the laws of said Territories respectively.

Legislative assembly.

SEC. 3. That the persons elected under such apportionment shall, when assembled at their respective capitals, at the time provided by law, and when duly qualified and organized, constitute the next legislative assembly in each of said Territories, and shall be empowered to alter or amend the reapportionment for members of the legislature so made, and at any time thereafter reapportion their respective Territories in accordance with the population, as the same may vary and change.

Appropriation.

SEC. 4. That the members constituting such boards of apportionment shall assemble at the capitals of their respective Territories and complete their work on or before the first Monday in September, eighteen hundred and eighty, and they shall be allowed the same compensation, per diem and mileage as are allowed to the presiding officers of the legislatures in such Territories; which allowance shall be certified by the secretary of the

Territory to the proper officers of the United States Treasury Department, and the same shall be paid out of any moneys in the Treasury not otherwise appropriated.

SEC. 5. That this act shall take effect and be in force from and after its passage.

6th June, 1880.

Care and custod of convicts of any Territory contracted for in any other Territory or State.

IBID. CHAP. 235. EXTRACT. That the legislative assemblies of the several Territories of the United States may make such provision for the care and custody of such persons as may be convicted of crime under the laws of such Territory as they shall deem proper, and for that purpose may authorize and contract for the care and custody of such convicts in any other Territory or State, and provide that such person or persons may be sentenced to confinement accordingly in such other Territory or State, and all existing legislative enactments of any of the Territories for that purpose are hereby legalized: *Provided*, That the expense of keeping such prisoners shall be borne by the respective Territories, and no part thereof shall be borne by the United States.

Proviso.

[PUBLIC—NO. 6.]

AN ACT amending section eighteen hundred and fifty-two of the Revised Statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section eighteen hundred and fifty-two be, and the same hereby is, so amended as to read as follows:

Duration of session.

"SEC. 1852. The sessions of the legislative assemblies of the several Territories of the United States shall be limited to sixty days' duration."

Approved, December 23, 1880.

REVISED STATUTES

OF THE

TERRITORY OF MONTANA,

IN FIVE DIVISIONS,

CONSISTING OF

CODE OF CIVIL PROCEDURE,
PROBATE PRACTICE ACT,
CRIMINAL PRACTICE ACT,
CRIMINAL LAWS,
GENERAL LAWS.

AN ACT

TO ARRANGE AND CODIFY THE GENERAL LAWS OF THE TERRITORY OF MONTANA, IN FORCE AT THE EXPIRATION OF THE ELEVENTH REGULAR SESSION OF THE LEGISLATIVE ASSEMBLY, ON THE 21ST DAY OF FEBRUARY, A. D. 1879.

Enacted by the Twelfth Legislative Assembly of Montana, on the Twenty-fifth day of January, A. D. 1881.

AN ACT

To arrange and codify the general laws of the Territory of Montana in force at the expiration of the Eleventh Regular Session of the Legislative Assembly, on the 21st day of February, A. D. 1879.

Be it enacted by the Legislative Assembly of the Territory of Montana

FIRST DIVISION.

CODE OF CIVIL PROCEDURE.

TITLE I.

OF THE FORM OF CIVIL ACTIONS.

CHAPTER 1.

Sec. 1. *One form of action in Law and Equity.*
Sec. 2. *Names of parties to an action.*
Sec. 3. *Facts not in issue, how tried.*

SECTION 1. There shall be in this Territory but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which shall be the same a law and in equity.

SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

TITLE II.

OF THE PARTIES TO CIVIL ACTIONS.

Sec. 4. *Real party in interest to sue.*
Sec. 5. *Assignments not to prejudice defence.*
Sec. 6. *Executor, administrator or trustee may sue alone.*
Sec. 7. *Married woman may sue alone, when.*
Sec. 8. *Wife may defend, when.*
Sec. 9. *Infant to appear by guardian.*
Sec. 10. *How and when guardian to be appointed.*
Sec. 11. *Unmarried woman may sue for her seduction.*
Sec. 12. *Parent or guardian may sue for seduction of daughter or ward.*
Sec. 13. *Injury or death of child or ward.*
Sec. 14. *Heirs and personal representatives may maintain action for damages by death of deceased.*
Sec. 15. *Who may be joined as plaintiffs.*
Sec. 16. *Who may be joined as defendants.*
Sec. 17. *Actions for the possession of real property.*
Sec. 18. *Who may unite to determine title to real estate.*
Sec. 19. *Joinder of parties, plaintiff or defendant.*
Sec. 20. *Joinder of parties severally liable.*
Sec. 21. *Joint tenants, tenants in common or coparceners may unite or sue severally.*

Sec. 22. *Actions not to abate, substitution of parties.*
Sec. 23. *Court may order another defendant substituted.*
Sec. 24. *How and when a person having an interest mag intervene.*
Sec. 25. *Of actions against copartners.*
Sec. 26. *When third parties brought in.*
Sec. 27. *When and how third party to interplead.*

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this act.

SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defence existing at the time of, or before notice of, the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration before due.

SEC. 6. An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

SEC. 7. When a married woman is a party her husband must join with her, except—

First. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.

Second. When the action is between herself and husband, she may sue or be sued alone.

Third. When she is living separate and apart from her husband, she may sue or be sued alone.

SEC. 8. If a husband and wife be sued together, the wife may defend for her own right; and if the husband neglect to defend, she may defend for his right also.

SEC. 9. When an infant is a party he shall appear by guardian, who may be appointed by the court in which the action was prosecuted, or by a judge thereof, or a probate judge.

SEC. 10. The guardian shall be appointed as follows:

First. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age upon the application of a relative or friend of the infant.

Second. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

SEC. 11. An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

SEC. 12. A father, or in case of his death or desertion, the mother may prosecute, as plaintiff, for the seduction of the daughter, and the guardian for the seduction of the ward, though the daughter or ward be not living with or in the service of the plaintiff at time of the seduction or afterwards, and there be no loss of service.

Sec. 13. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

Sec. 14. Where the death of a person not being a minor is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, or if such person be employed by another person, who is responsible for his action, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just.

Sec. 15. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this act.

Sec. 16. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.

Sec. 17. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may join as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises as against the defendants in action against whom the judgment has passed.

Sec. 18. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners, or in severalty, may unite in action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

Sec. 19. Of the parties to the action, those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

Sec. 20. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action at the option of the plaintiff.

Sec. 21. All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

Sec. 22. An action or proceeding does not abate by the death, marriage or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, marriage or other disability of a party, the court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

Sec. 23. A defendant against whom an action is pending upon a contract, or for specific, real or personal property, may at any time, before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may, in its discretion, make the order.

Sec. 24. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter of litigation in the success of either of the parties, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court, and served upon the parties to the action or proceedings who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

Sec. 25. Where two or more persons associated in the same business transact such business under a common name, whether it comprise the names of such persons or not, the associates may be sued by such common name, the summons in such case being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates in the same manner as if all had been named defendants, and had been sued upon their joint liability.

Sec. 26. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

Sec. 27. When, in a civil action, a person not a party thereto, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in, and upon due service upon the adverse party of his complaint, or answer, the same proceedings shall be had as if he had been an original party to the action.

TITLE III.—CHAPTER I.

OF THE TIME OF COMMENCING ACTIONS.

Sec. 28. Civil actions only to be commenced within certain limits.

SEC. 28. Civil actions can only be commenced within the periods prescribed in this Title, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

CHAPTER II.

OF THE TIME OF COMMENCING ACTIONS CONCERNING REAL PROPERTY.

Sec. 29. *Action for the recovery of real property.*
Sec. 30. *Action for the recovery of interest in real property.*
Sec. 31. *When entry upon real estate deemed sufficient.*
Sec. 32. *When possession presumed to be established.*
Sec. 33. *When property deemed to be held adversely.*
Sec. 34. *What constitutes adverse possession.*
Sec. 35. *As to adverse possession by occupancy only.*
Sec. 36. *What constitutes adverse possession when title not founded on a written instrument.*
Sec. 37. *Extent that possession of tenant is deemed possession of the landlord.*
Sec. 38. *Right of possession not impaired by the death of party in possession.*
Sec. 39. *Time during which certain disabilities continue not to be counted as portion of limitation.*
Sec. 40. *Limitation as to mining property.*

SEC. 29. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the property in question within five years before the commencement of the action.

SEC. 30. No cause of action or defence to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual unless it appear that the person prosecuting the action, or making the defence, or under whose title the action is prosecuted, or the defence is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question within five years before the commencement of the act in respect to which such action is prosecuted or defence made.

SEC. 31. No entry upon real estate is deemed sufficient or valid, as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the right to make it descended or accrued.

SEC. 32. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title for five years before the commencement of the action.

SEC. 33. When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there had been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property under such claim, for five years, the property so included is deemed to have been held adversely, except that, when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

SEC. 34. For the purpose of constituting adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

First. Where it has been usually cultivated or improved.

Second. Where it has been protected by a substantial enclosure.

Third. Where, although not enclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant.

Fourth. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

SEC. 35. Where it appears that there has been an actual continued occupation of land, under a claim of title exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

SEC. 36. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

First. Where it has been protected by a substantial enclosure.

Second. Where it has been usually cultivated or improved.

SEC. 37. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five years from the termination of the tenancy, or, where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord; but such presumptions cannot be made after the periods herein limited.

SEC. 38. The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of such property.

SEC. 39. If a person entitled to commence an action for the recovery of real property, or for the recovery of possession thereof, or to make any entry or defence founded on the title to real property, or to rents or services out of the same, be, at the time such title descends or accrues, either, first, within the age of majority; or, second, insane; or, third, imprisoned on a criminal charge, or in execution upon conviction of a criminal offence, for a term less than for life; or, fourth, a married woman, and her husband be a necessary party with her in commencing such action or making such entry or defence—the time during which such disability continues is not deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defence, but such action may be commenced, or entry or defence made, within the period of five years after such disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced, or entry or defence made, after that period.

SEC. 40. No action for the recovery of mining claims (lode claims excepted), or for the recovery of possession thereof, shall be maintained, unless it appear that the plaintiff or his assigns was seized or possessed of such mining claims within one year before the commencement of such action.

CHAPTER III.

OF THE TIME OF COMMENCING ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

Sec. 41. *On Judgments and written contracts.*
Sec. 42. *Limitation in cases of trespass, fraud, etc.*
Sec. 43. *Against public officer.*
Sec. 44. *On parol contract, account, libel, etc.*
Sec. 45. *Action for penalties and against officer for an escape.*
Sec. 46. *No limitation to recover money deposited with a bank.*
Sec. 47. *Limitation of actions not specially provided for.*
Sec. 48. *Computation of time limited in actions on account.*
Sec. 49. *When the Territory is a party.*
Sec. 50. *Absence from Territory not included in time limited.*
Sec. 51. *In case of the reversal of a judgment.*
Sec. 52. *Injunction or statute stops limitation.*
Sec. 53. *Effect of new promise on limitation.*
Sec. 54. *Effect of part payment on limitation.*
Sec. 55. *Causes of action arising out of the Territory.*

SEC. 41. Actions other than those for the recovery of real property, as follows: 1, an action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States, shall be commenced within six years; 2, an action upon any contract, obligation or liability, founded upon an instrument in writing, shall be commenced within six years.

SEC. 42. 1, an action for waste or trespass upon real property; 2, an action upon a liability created by a statute, other than a penalty of forfeiture; 3, an action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property; 4, an action for relief on the ground of fraud or mistake (the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting fraud or mistake), shall be commenced within two years.

SEC. 43. An action against a sheriff, coroner, or constable, upon the liability incurred by the doing of an act in official capacity and in virtue of his office, or by the omission of an official duty, shall be commenced within two years.

SEC. 44. 1, an action upon an account, or other contract, obligation or liability, not founded upon an instrument of writing; 2, an action for libel, assault, or assault and battery, or false imprisonment; 3, an action upon an account for goods, wares, or merchandise sold and delivered, and upon any express or implied promise not above enumerated, shall be commenced within two years.

SEC. 45. 1, an action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the Territory, except where the statute imposing it prescribes a different limitation; 2, an action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process, shall be commenced within one year.

SEC. 46. There shall be no limitation upon the right to maintain an action for the recovery of money or other property deposited with any bank, banker, trust company, or savings and loan society.

SEC. 47. An action for relief not hereinbefore provided for must be commenced within three years after the cause of action shall have accrued.

SEC. 48. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

SEC. 49. The limitations prescribed in this act shall apply to actions brought in the name of the Territory, or for the benefit of the Territory, in the same manner as to actions brought by private parties.

SEC. 50. If when the cause of action shall accrue against a person when he is out of the Territory, the action may be commenced within the time herein limited, after his return to the Territory; and if after the cause of action shall have accrued he depart from this Territory, the time of his absence shall not be a part of the time limited for the commencement of the action.

SEC. 51. If the action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be rendered on error or appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

SEC. 52. When the commencement of an action is stayed by injunction, or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

SEC. 53. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this act, unless the same is contained in some writing signed by the party to be charged thereby; but this act shall not alter the effect of any payment of principal or interest.

SEC. 54. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment shall be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Sec. 55. When the cause of action shall have arisen in any other State or Territory of the United States, or in a foreign country, and by the laws thereof an action cannot be maintained against a person by reason of the lapse of time, no action thereon shall be commenced against him in this Territory.

TITLE IV.—CHAPTER I.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

Sec. 56. *Actions to be tried in the County where subject of action is situated.*
Sec. 57. *Actions to be tried in the County where cause of action arose.*
Sec. 58. *Actions against Counties.*
Sec. 59. *Actions in all other cases.*
Sec. 60. *Actions arising in a County attached to another for judicial purposes.*
Sec. 61. *Actions not to abate if brought in wrong County.*
Sec. 62. *Venue, how changed.*
Sec. 63. *Venue, how changed when Court is disqualified.*
Sec. 64. *Papers and pleadings to be transmitted when change of Venue granted.*
Sec. 65. *Clerk to certify and transmit judgment affecting real estate in another County.*

Sec. 56. Except when otherwise provided, actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this act:

First. For the recovery of real property, or of an interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

Second. For the partition of real property.

Third. For the foreclosure of a mortgage of real property: *Provided*, That where such real property is situated partly in one county and partly in another, the plaintiff may select either of said counties, and the county so selected shall be the proper county for the trial of any or all of such actions as are mentioned in this section.

Sec. 57. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial:

First. For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offence committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offence was committed.

Second. Against a public officer or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, does anything touching the duties of such officer.

Sec. 58. Actions against counties may be commenced and tried in any county in the judicial district in which such county is situated, unless such actions are between counties, in which case they may be commenced and tried in any county not a party thereto.

Sec. 59. In all other cases, the action shall be tried in the county in which the defendants, or any of them, may reside at the commencement of the action, or where the plaintiff resides, and the defendants, or any of them, may be found; or if none of the defendants reside in the Territory, or if residing in the Territory, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant or defendants may be about to depart from the Territory, such action may be tried in any county where either of the parties may reside, or service be had. Actions upon contracts may be tried in the county in which the contract was to be performed; and actions for torts, in the county where the tort was committed; subject, however, to the power of the court to change the place of trial, as provided in this act.

Sec. 60. When a county shall be attached to another county for judicial purposes, actions arising or triable therein, of which a district court shall have exclusive jurisdiction, shall be commenced and tried in the county to which such county may be so attached.

Sec. 61. If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and answers or demurs, files an affidavit of merits, and demands, in writing, that the trial be had in the proper county.

Sec. 62. The court may, on good cause shown, change the place of trial in the following cases:

First. When the county designated in the complaint is not the proper county.

Second. When there is reason to believe that an impartial trial cannot be had therein.

Third. When the convenience of witnesses and the ends of justice would be promoted by the change.

Fourth. When, from any cause, the judge is disqualified from acting in the action: *Provided,* The court shall not change the place of trial for disqualification of the district judge, in any case where the judge of another district court will appear and try the action.

Sec. 63. If an action or proceeding is commenced or pending in a court, and the judge or justice thereof is disqualified from acting as such, or if for any cause, the court orders the place of trial to be changed, it must be transferred for trial to a court the parties may agree upon by stipulation in writing, or made in open court, and entered in the minutes; or if they do not so agree, then to the nearest court where the like objection or cause for making the order does not exist, as follows:

First. If in the district court, to another district court.
Second. If in the probate court, to some other probate court.
Third. If in a justice's court, to another justice's court in the same county.

Sec. 64. When an order is made, transferring an action or proceeding for trial, the clerk of the court or justice of the peace must transmit the pleading and papers therein to the clerk or justice of the court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The court to which an action or proceeding is transferred has, and exercises over the same, the like jurisdiction as if it had been originally commenced therein.

Sec. 65. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any court of a county other than the county in which the real estate, or some portion of it, is situated, the clerk of such court must, after final judgment thereon, certify, under his seal of office, and transmit to the corresponding court of the county in which the real estate affected by the action is situated, a copy of the judgment. The clerk receiving such copy must file, docket, and record the judgment in the records of the court, briefly designating it as a judgment transferred from——— court (naming the proper court.)

TITLE V. CHAPTER I.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

Sec. 66. *Civil Actions, how commenced.*
Sec. 67. *Complaint to be endorsed, when and how summons issued or waived.*
Sec. 68. *Summons, how directed, signed and issued, and contents thereof.*
Sec. 69. *Alias summons, when issued.*
Sec. 70. *Notice of lis pendens.*
Sec. 71. *Summons, by whom served and how returned.*
Sec. 72. *Summons, how served.*
Sec. 73. *Summons, how served on non-residents, corporations, and when defendant cannot be found.*
Sec. 74. *Publication, service by, how obtained.*
Sec. 75. *When service made on one or more of two or more joint defendants, how to proceed.*
Sec. 76. *Proof of service of summons.*
Sec. 77. *Time and place of service to be stated.*
Sec. 78. *Jurisdiction, when court deemed to have acquired.*

Sec. 66. Civil actions in the courts of this Territory are commenced by filing a complaint.

Sec. 67. The clerk must endorse on the complaint the day, month and year that it is filed, and at any time within one year thereafter the plaintiff may have a summons issued, and if the action be brought against two or more defendants who reside in different counties, may have a summons issued for each of such counties at the same time. But at any time within the year after the complaint is filed, the defendant may, in writing or by appearing and answering or demurring, waive the issuing of summons, or if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year at any time before trial.

SEC. 68. The summons must be directed to the defendant, signed by the clerk, and issued under the seal of the court, and must contain:

First. The names of the parties to the action, the court in which it is brought, and the county in which the complaint is filed.

Second. The cause and general nature of the action.

Third. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the action is brought; within twenty days, if served out of the county, but in the district in which the action is brought; and within forty days, if served elsewhere.

Fourth. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint (stating it).

Fifth. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded in the complaint.

The name of the plaintiff's attorney must be endorsed on the summons.

SEC. 69. If the summons is returned without being served on any or all of the defendants, or if it has been lost, the clerk, upon the demand of the plaintiff, may issue an *alias* summons in the same form as the original.

SEC. 70. In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties and the object of the action or defence, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

SEC. 71. The summons may be served by the sheriff of the county where the defendant is found, or by any other person over the age of eighteen, not a party to the action. When the summons is served by the sheriff it must be returned, with his certificate of its service, and of the service of any copy of the complaint, where such copy is served, to the office of the clerk from which it issued. When it is served by any other person it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

SEC. 72. The summons must be served by delivering a copy thereof, as follows:

First. If the suit is against a corporation formed under the laws of this Territory, to the president or other head of the corporation, secretary, cashier or managing agent thereof.

Second. If the suit is against a foreign corporation, or a non-resident joint-stock company or association doing business and having a managing or business agent, cashier, or secretary, within this Territory, to such agent, cashier or secretary.

Third. If against a minor, under the age of fourteen years, residing within this Territory, to such minor personally, and also to his father, mother, or guardian; or if there be none within this Territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

Fourth. If against a person residing within this Territory, who has been judicially declared of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such person, and also to his guardian.

Fifth. If against a county, city or town, to the president of the board of supervisors, president of the council or trustees, or other head of the legislative department thereof.

Sixth. In all other cases, to the defendant personally.

SEC. 73. Where the person on whom the service is to be made resides out of the Territory, or has departed from the Territory, or cannot after due diligence be found within the Territory, or conceals himself to avoid the service of summons, or is a foreign corporation, having no managing or business agent, cashier or secretary within the Territory, and the fact appears by affidavit to the satisfaction of the court or judge thereof, and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may make an order that the service be made by the publication of the summons.

SEC. 74. The order must direct the publication to be made in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable—at least once a week; but publication against a defendant residing out of the Territory, or absent therefrom, must not be less than four weeks. In case of publication where the residence of a non-resident or absent defendant is known, the court or judge must direct a copy of the summons to be forthwith deposited in the post-office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory is equivalent to publication and deposit in the post-office; and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication.

SEC. 75. When the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendant served in the same manner as if they were the only defendants.

SEC. 76. Proof of the service of summons must be as follows:

First. If served by the sheriff, his certificate thereof.

Second. If by any other person, his affidavit thereof; or,

Third. In case of publication, the affidavit of the printer or his foreman or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the post-office, if the same has been deposited; or,

Fourth. The written admission of the defendant.

SEC. 77. In case of service otherwise than by publication, the certificate or affidavit must state the time and place of service.

SEC. 78. From the time of the service of the summons and of the copy of the complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

TITLE VI.

OF THE PLEADINGS IN CIVIL ACTIONS.

CHAPTER I.

Sec. 79. *Pleadings defined.*
Sec. 80. *Forms and sufficiency of pleadings.*
Sec. 81. *Pleadings of plaintiff and defendant.*

SEC. 79. The pleadings are the formal allegations by the parties of their respective claims and defences for the judgment of the court.

SEC. 80. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this act.

SEC. 81. The only pleadings allowed on the part of the plaintiff are:
First. The complaint;
Second. The demurrer to the answer;
Third. The replication to defendant's answer.
And on the part of defendant:
First. The demurrer to the complaint;
Second. The answer.

CHAPTER II.

THE COMPLAINT.

Sec. 82. *Complaint.*
Sec. 83. *Complaint must contain.*
Sec. 84. *Joinder of actions.*

SEC. 82. The first pleading on the part of the plaintiff is the complaint.

SEC. 83. The complaint must contain:

First. The title of the action; the name of the court and county in which the action is brought, and the names of the parties to the action.

Second. A statement of the facts constituting the cause of action, in ordinary and concise language.

Third. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

SEC. 84. The plaintiff may unite several causes of action in the same complaint when they arise out of:

First. Contracts, expressed or implied.

Second. Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same, and for an injunction to stay waste or injury thereto.

Third. Claims to recover specific personal property, with or without damages, for the withholding thereof.

Fourth. Claims against a trustee by virtue of a contract, or by operation of law.

Fifth. Injuries to character.

Sixth. Injuries to person.

Seventh. Injuries to property; but the causes of action so united shall all belong to only one of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated: *Provided, however,* That an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to person.

CHAPTER III.

THE DEMURRER.

Sec. 85. When defendant may demur.

Sec. 86. When objections deemed waived.

SEC. 85. The defendant may demur to the complaint within the time required in summons to answer, when it appears upon the face thereof, either:

First. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,

Second. That the plaintiff has no legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect or misjoinder of parties, plaintiff or defendant; or,

Fifth. That several causes of action have been improperly united; or,

Sixth. That the complaint does not state facts sufficient to constitute a cause of action; or,

Seventh. That the complaint is ambiguous, unintelligible or uncertain.

The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken; unless it do so, it may be disregarded.

The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue, or may demur and answer at the same time: *Provided,* That a demurrer and answer shall in no case be filed at the same time to the same cause of action; but demurrers must be disposed of before any other pleadings to the same cause of action shall be filed.

If the complaint be amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney, if he has appeared by attorney. The defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases.

Sec. 86. When any of the matters enumerated in Section 85 do not appear upon the face of the complaint, the objection may be taken by answer. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action.

CHAPTER IV.

THE ANSWER.

Sec. 87. *What answer to contain.*
Sec. 88. *Counter claims.*
Sec. 89. *Counter claims, when barred, cross demands.*

Sec. 87. The answer of the defendant shall contain:

First. A specific denial of the material allegations of the complaint controverted by the defendant.

Second. A statement of any new matter constituting a defence or counter claim.

If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively or according to the information and belief of the defendant.

Sec. 88. The counter claim mentioned in the last section shall be one existing in favor of the defendant or plaintiff, and against a plaintiff or defendant, between whom a several judgment might be had in the action, arising out of one of the following causes of action:

First. A cause of action arising out of the transaction set forth in the complaint or answer as the foundation of the plaintiff's claim or defendant's defence, or connected with the subject of the action.

Second. In an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action.

Sec. 89. If the defendant omit to set up a counter claim in the cases mentioned in the first sub-division of the last section; neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

When cross demands have existed between persons under such circumstances that if one had brought an action against the other a counter claim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other, but the two demands shall be deemed compensated so far as they equal each other.

The defendant may set forth, by answer, as many defences and counter claims as he may have; they shall each be separately stated, and the several defences shall refer to the causes of action which they are intended to answer in a manner by which they may be intelligibly distinguished.

CHAPTER V.

DEMURRER TO ANSWER—REPLICATION.

Sec. 90. *The demurrer to answer.*
Sec. 91. *Causes of demurrer.*
Sec. 92. *Replication.*

SEC. 90. The plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the answer of the defendant, or to one or more of the several defences or counter claims set up in the answer.

SEC. 91. The demurrer may be taken upon one or more of the following grounds:

First. That several causes of counter claim have been improperly joined.

Second. That the answer does not state facts sufficient to constitute a defence or counter claim.

Third. That the answer is ambiguous, unintelligible, or uncertain.

SEC. 92. When the answer contains new matter the plaintiff may, within ten days from the date of filing such answer, reply thereto, and upon the overruling of a demurrer to an answer, the court may allow the plaintiff to file a reply upon payment of costs caused by such demurrer.

CHAPTER VI.

VERIFICATION, ETC., OF PLEADINGS.

Sec. 93. *Pleadings subscribed.*
Sec. 94. *Verification of pleadings.*
Sec. 95. *Genuineness and due execution of a written instrument admitted unless answer is verified.*
Sec. 96. *When genuineness and due execution of a written instrument in the answer, admitted.*
Sec. 97. *When not deemed admitted.*

SEC. 93. Every pleading must be subscribed by the party or his attorney.

SEC. 94. All complaints, answers and replications shall be verified as provided in this section, except that when an admission of the truth of the allegation might subject the party to a prosecution for felony or misdemeanor, or when the action is by the district attorney, in behalf of the Territory or county, the verification may be omitted. The affidavit of verification shall state that the facts stated in the pleading are true to the knowledge of the person making it, except as to those matters which are therein stated on his information and belief, and as to those matters, that he believes it to be true. Such verification shall be made by the party, or if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts, if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party, if the party is absent from the county where the attorney resides, or is from any other cause unable to verify the pleading, and in such case the verification shall state that the affiant is the agent or attorney of the party, and the reason why such verification is made by such agent or attorney, and that the facts stated in the pleading are true to the best knowledge, information and belief of such agent or attorney.

When a corporation is a party, the verification may be made by any officer thereof, and shall state what officer he is, and that the facts stated in the pleading are true to the best knowledge, information and belief of such officer.

Sec. 95. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same shall be verified.

Sec. 96. When the defence to an action is founded on a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the clerk, within ten days after the filing of the answer, an affidavit denying the same, and serve a copy thereof on the defendant.

Sec. 97. But the execution of the instrument mentioned in the two preceding sections is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same is, upon demand, refused an inspection of the original.

CHAPTER VII.

CONSTRUCTION OF PLEADINGS, ETC.

Sec. 98. *Allegations in pleadings liberally construed.*
Sec. 99. *Sham, irrelevant and redundant matter; items of account.*
Sec. 100. *Description of real property in complaint.*
Sec. 101. *Judgments, how pleaded.*
Sec. 102. *Conditions precedent, how pleaded.*
Sec. 103. *Statute of Limitations, how pleaded and how controverted.*
Sec. 104. *Private statute, how pleaded.*
Sec. 105. *Libel and slander, what stated in the complaint.*
Sec. 106. *Answer in libel and slander.*
Sec. 107. *Allegations in pleadings not controverted deemed true, etc.*
Sec. 108. *Material allegation defined.*
Sec. 109. *Supplemental pleadings.*

Sec. 98. In the construction of a pleading for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

SEC. 99. Sham and irrelevant answers, and irrelevant and redundant matter, inserted in a pleading may be stricken out upon such terms as the court may in its discretion impose.

It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party, within five days after a demand therefor in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or judge thereof, or probate judge, may order a further account when the one delivered is too general, or is defective in any particular.

SEC. 100. In action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer upon execution to identify it.

SEC. 101. In pleading a judgment or other determination of a court, or officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

SEC. 102. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish, on the trial, the facts showing such performance.

SEC. 103. In pleading the Statute of Limitations, it is not necessary to state the facts showing the defence, but it may be stated generally that the cause of action is barred by the provisions of sections ——— (giving the number of the section, and sub-division thereof, if it is so divided, relied upon) of the Code of Civil Procedure; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

SEC. 104. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

SEC. 105. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish, on the trial, that it was so published or spoken.

SEC. 106. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 107. Every material allegation of the complaint or answer not controverted by the answer, or replication thereto, shall, for the purposes of the action, be taken as true. The statement in the replication of matter in avoidance shall, on the trial, be deemed controverted by the adverse party.

SEC. 108. A material allegation in a pleading is one essential to the claim or defence, and which could not be stricken from the pleading without leaving it insufficient.

SEC. 109. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case, occurring after the former complaint or answer.

CHAPTER VIII.

VARIANCE—ERRORS—AMENDMENTS.

Sec. 110. *Variance between pleadings and proofs.*
Sec. 111. *Variance not material, power of court.*
Sec. 112. *What variance deemed failure of proof.*
Sec. 113. *Pleadings amended once without costs.*
Sec. 114. *Amendments on terms, judgment by mistake, etc.*
Sec. 115. *In actions for recovery of personal property, when error in stating value disregarded.*
Sec. 116. *When defendant may be sued by fictitious name.*
Sec. 117. *Court may disregard errors not affecting substantial rights.*

SEC. 110. No variance between the allegation in a pleading and the proofs is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defence upon the merits. Where it appears that a party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.

SEC. 111. Where the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

SEC. 112. Where, however, the allegation of the claim, or defence to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case at variance within the last two sections, but a failure of proofs.

SEC. 113. Any pleading may be amended once by the party of course, and without costs, at any time before answer or demurrer filed, and after the demurrer and before the trial of the issue of law thereon, by filing the same as amended, and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading.

SEC. 114. The court may, in furtherance of justice and on such terms as may be proper, amend any pleading or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for an answer, replication or demurrer, or demurrer to an answer filed. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in any other particulars; and may, upon like terms, allow an answer to be made after the time limited by this act; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, for any cause satisfactory to the court, or the judge at chambers, the party aggrieved has been unable to apply for the relief sought, during the term at which such judgment, order or proceeding complained of was taken, the court or judge at chambers, in vacation, may grant the relief, upon application made within a reasonable time, not exceeding five months after the adjournment of the term. When, from any cause, the summons and copy of the complaint in an action have not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

Sec. 115. When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond, are sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made; or that the value in the affidavit stated was inserted by mistake; and the court shall disregard the value, as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.

Sec. 116. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated, in any pleading or proceeding, by any name; and when his true name is discovered, the pleadings or proceedings may be amended accordingly.

Sec. 117. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect.

TITLE VII.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

CHAPTER I.

ARREST AND BAIL.

Sec. 118. *No person to be arrested in civil action except.*
Sec. 119. *When defendant may be arrested in a civil action.*
Sec. 120. *Order of arrest.*
Sec. 121. *When order made, undertaking therefor.*
Sec. 122. *Justification of sureties.*
Sec. 123. *When order made and what to require.*
Sec. 124. *How order to be served on defendant.*
Sec. 125. *How order executed, expense of keeping defendant.*
Sec. 126. *Defendant discharged upon giving bail.*
Sec. 127. *Bail, form of undertaking.*

Sec. 128. *Bail may surrender defendant.*
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Sec. 133. *Notice of justification of bail, new undertaking.*
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Sec. 137. *Deposit of money instead of bail.*
Sec. 138. *May deposit with sheriff, clerk to give two certificates.*
Sec. 139. *Bail given, deposit refunded.*
Sec. 140. *Money deposited, how disposed of.*
Sec. 141. *Sheriff liable for escape.*
Sec. 142. *Sheriff's official bond liable.*
Sec. 143. *Proceedings to vacate order or reduce bail.*
Sec. 144. *Where order vacated or bail reduced.*
Sec. 145. *Discharge of persons in jail.*
Sec. 146. *Defendant to give notice of application.*
Sec. 147. *How notice served.*
Sec. 148. *Examination of defendant.*
Sec. 149. *Discharge and oath of prisoner.*
Sec. 150. *Order of discharge.*
Sec. 151. *Prisoner may apply every ten days.*
Sec. 152. *Effect of discharge.*
Sec. 153. *Plaintiff may discharge prisoner.*

SEC. 118. No person shall be arrested in a civil action, except as prescribed in this act.

SEC. 119. The defendant may be arrested, as hereinafter prescribed, in the following cases arising after the passage of this act:

First. In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Territory with intent to defraud his creditors; or when the action is for willful injury to person, to character, or to property, knowing the property to belong to another.

Second. In an action for a fine or penalty; or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office, or in a professional employment; or for a willful violation of duty.

Third. In an action to recover possession of personal property, unjustly obtained, when the property, or any part thereof, has been concealed, removed or disposed of, so that it cannot be found or taken by the sheriff.

Fourth. When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention or conversion of which the action is brought.

Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

SEC. 120. An order for the arrest of the defendant shall be obtained from a judge of the court in which the action is brought, or from a probate judge.

SEC. 121. The order shall be made whenever it shall appear to the judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in Section 119. Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with at least two sufficient sureties, to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an order of arrest, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the wrongful suing out of the order of arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars.

SEC. 122. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder, or freeholder, within the Territory, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

SEC. 123. The order may be made to accompany the summons, or at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

SEC. 124. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

SEC. 125. The sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law: *Provided*, That the sheriff shall not be bound to keep such person under arrest more than twenty-four hours, unless the plaintiff advance each day the expense of keeping such person, which expense shall be taxed as costs in the action, and in no case shall be a charge against the county.

SEC. 126. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this chapter.

SEC. 127. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

SEC. 128. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested.

SEC. 129. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff, or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail shall be exonerated: *Provided,* Such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter.

SEC. 130. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

SEC. 131. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a territorial prison; or by his legal discharge from the obligation to render himself amenable to the process.

SEC. 132. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession, until filed as herein provided. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

SEC. 133. Within five days after receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the place of residence and occupation of the latter), before a judge of the court, or clerk thereof, or probate judge, at a specified time and place; the time to be not less than five nor more then ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

SEC. 134. The qualifications of bail shall be as follows:

First. Each of them shall be a resident and householder, or freeholder, within the county.

Second. Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 135. For the purpose of justification, each of the bail shall attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail if required by the plaintiff.

SEC. 136. If the judge or clerk shall find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon. and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

SEC. 137. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

SEC. 138. The sheriff shall, immediately after the deposit, pay the same into court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver or transmit to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

SEC. 139. If money be deposited as provided in the last two sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

SEC. 140. Where money shall have been deposited, if it remain on deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under the direction of the court, refund him the whole sum deposited and remaining unapplied.

SEC. 141. If, after being arrested, the defendant escape or be rescued, the sheriff shall himself be liable as bail, but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

SEC. 142. If a judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied in whole or in part, the same proceeding may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

SEC. 143. A defendant arrested may, at any time before justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs in addition to those on which the order of arrest was made.

SEC. 144. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

SEC. 145. Every person confined in jail on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions hereinafter specified.

SEC. 146. Such person shall cause notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place he will apply to the district or probate judge of the county in which such person may be confined, for the purpose of obtaining a discharge from his imprisonment.

SEC. 147. Such notice shall be served upon the plaintiff, his agent or attorney, one day at least before the hearing of the application. If the plaintiff be not a resident of the county, and have no agent or attorney in the county, no such notice need be served.

SEC. 148. At the time and place specified in the notice, such person shall be taken before such judge, who shall examine him under oath, concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and such judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditor.

SEC. 149. If, upon examination, the judge be satisfied that the prisoner is entitled to his discharge, such judge shall administer to him the following oath: "I, ——— ———, do solemnly swear (or affirm) that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken on execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors."

SEC. 150. After administering the oath, the judge shall issue an order that the prisoner be discharged from custody, if he be imprisoned for no other cause; and the officer upon receiving service of such order, shall discharge the prisoner forthwith, if he be imprisoned for no other cause.

SEC. 151. If such judge should not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceedings shall thereupon be had.

SEC. 152. The prisoner, after being so discharged, shall be forever exempt from arrest and imprisonment for the same debt, but the judgment against him shall remain in full force against any estate, present or future, of the prisoner, not exempt from execution.

SEC. 153. The plaintiff in the action may, at any time, order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action.

CHAPTER II.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

Sec. 154. *Plaintiff may claim delivery of certain property.*
Sec. 155. *Affidavit, what to show.*
Sec. 156. *Endorsement requiring sheriff to take the property.*
Sec. 157. *Affidavit and notice. Undertaking to be executed, and how served, what to contain. Sheriff to take property.*
Sec. 158. *Exceptions to sufficiency of sureties: proceedings thereon, or on failure to except.*
Sec. 159. *Upon judgment in what condition property to be returned.*
Sec. 160. *When property injured while retained action may be had.*
Sec. 161. *When property to be sold by sheriff and applied on judgment.*
Sec. 162. *Sureties not released by proceeding under preceding section.*
Sec. 163. *Defendant by filing undertaking may require property returned.*
Sec. 164. *Defendant's sureties to justify. Sheriff responsible and may retain property.*
Sec. 165. *Qualification and justification of sureties.*
Sec. 166. *Duty of sheriff if property concealed.*
Sec. 167. *Sheriff to keep and deliver property.*
Sec. 168. *Claim of property by third person.*
Sec. 169. *Notice, undertaking and affidavit to be filed.*

SEC. 154. The plaintiff, in an action to recover possession of personal property, may, at the time of issuing summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter.

SEC. 155. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

First. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof.

Second. That the property is wrongfully detained by the defendant.

Third. The alleged cause of the detention thereof according to his best knowledge, information and belief.

Fourth. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by the statute exempt from such seizure; and,

Fifth. The actual value of the property.

SEC. 156. The plaintiff or his attorney may thereupon, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant.

SEC. 157. Upon receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit, for the prosecution of the action without delay and with effect, and for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody.

He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

SEC. 158. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice, in like manner as upon bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

SEC. 159. In all cases when a judgment shall be rendered in an action to recover the possession of personal property for the return thereof, or its value in case a return cannot be had, it shall be the duty of the party against whom such judgment shall be rendered to return the same in as good condition as the same was when possession thereof was taken by him.

SEC. 160. In case such property shall, while in the possession of the party against whom such judgment shall be rendered, or while the same shall be unlawfully detained from the party entitled to the possession thereof, be materially injured or lessened in value by use or otherwise, then a return or offer to return the same shall not be deemed a compliance with the undertaking given for its return, but an action may be maintained for the value thereof as assessed by the jury or court, and damages for its detention.

SEC. 161. In case such action to recover possession of personal property shall be brought against any sheriff or other officer who may have levied upon and seized the same under authority of any attachment or other process, and judgment shall be rendered in favor of such officer for the return of the property, the party against whom such judgment shall be rendered may nevertheless make return of said property, notwithstanding the same may have been injured or lessened in value, and thereupon it shall be the duty of such officer to immediately advertise the same for sale as in cases of sales of personal property under execution, and apply the proceeds of the sale thereof, after paying the costs, towards the payment and satisfaction of any judgment that may have been rendered.

SEC. 162. Such second taking of such property referred to in the preceding section shall not release or discharge the sureties on any undertaking given for the return of such property, but an action may be maintained on such undertaking and recovery thereon had, unless the property shall have been actually returned in accordance with the judgment rendered.

SEC. 163. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 168.

SEC. 164. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than five days, shall justify before a judge or clerk, in the same manner as upon bail on arrest; and upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

SEC. 165. The qualification of sureties and their justification shall be such as are prescribed by this act in respect to bail upon an order of arrest.

SEC. 166. If the property, or any part thereof, be concealed in a building or enclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of his county.

SEC. 167. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 168. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless so made.

SEC. 169. The sheriff shall file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER III.

INJUNCTION.

Sec. 170. *Injunction defined.*
Sec. 171. *In what cases injunction granted.*
Sec. 172. *When granted, complaint verified, and copies served.*
Sec. 173. *When allowed after answer filed.*
Sec. 174. *Court granting must require an undertaking, form of; proceedings when sureties excepted to.*
Sec. 175. *Defendant may be heard before granting injunction.*
Sec. 176. *Injunction to suspend business of corporation.*
Sec. 177. *Application to vacate or modify injunction, how made and opposed.*
Sec. 178. *When it shall be vacated or modified.*

Sec. 170. An injunction is a writ or order requiring a person to refrain from a particular act. The order or writ may be granted by the court in which the action is brought, or by a judge thereof, and when made by a judge may be enforced as the order of the court.

Sec. 171. An injunction may be granted in the following cases:

First. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or pepetually.

Second. When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff.

Third. When it shall appear during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Sec. 172. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards, before judgment, upon affidavits. The complaint in the one case, and the affidavits in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint, or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction; when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

Sec. 173. An injunction shall not be allowed after the defendant has answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

Sec. 174. On granting an injunction, the court or judge must require, except the people of the Territory are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

Within five days after the filing of the undertaking required, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before a judge or county clerk, in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

SEC. 175. If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place, why the injunction should not be granted, and the defendant may in the meantime be restrained.

SEC. 176. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or a judge thereof; nor shall it be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the people of this Territory are a party to the proceedings.

SEC. 177. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on part of defendant, with or without the answer. If the application be made upon affidavit on part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

SEC. 178. If, upon such application, it satisfactorily appear that there is not sufficient ground for the injunction, it shall be dissolved; or, if it satisfactorily appear that the extent of the injunction is too great, it shall be modified.

CHAPTER IV.

ATTACHMENTS.

Sec. 179. *Attachment when issued and affidavit for.*
Sec. 180. *Undertaking, sureties thereon and amount.*
Sec. 181. *Attachment, when debt not due, in what cases.*
Sec. 182. *Writ, how directed, and what to contain.*
Sec. 183. *Property liable to attachment.*
Sec. 184. *In what manner writ executed.*
Sec. 185. *County recorder to file copy of writ, fees therefor.*
Sec. 186. *Garnishment.*

Sec. 187. *Liability of garnishee.*
Sec. 188. *Garnishee and defendant may be examined.*
Sec. 189. *Inventory and return of sheriff, and memorandum of garnishee.*
Sec. 190. *Perishable property, proceeds of other property and debts and credits.*
Sec. 191. *Property attached claimed by third parties.*
Sec. 192. *Satisfaction of judgment out of attached property.*
Sec. 193. *Sheriff shall collect balance of judgment as upon an execution.*
Sec. 194. *Plaintiff may prosecute the undertaking.*
Sec. 195. *If defendant recover judgment property to be returned and attachment discharged.*
Sec. 196. *Defendant may obtain release of property attached.*
Sec. 197. *Undertaking for release of property attached.*
Sec. 198. *Application to discharge attachment improperly issued.*
Sec. 199. *Motion on affidavits may be opposed by affidavits.*
Sec. 200. *If improperly issued, discharged.*
Sec. 201. *Return of writ.*
Sec. 202. *When lien accrues, first writ levied first lien.*
Sec. 203. *Attachment book to be kept by recorder, his fees.*

SEC. 179. The plaintiff at the time of issuing the summons, or at any time afterwards, may have the property of the defendant not exempt from execution attached as security for the satisfaction of any judgment that may be recovered in said action, unless the defendant give good and sufficient security to secure the payment of said judgment: *Provided,* That no writ of attachment shall be issued until the plaintiff, his agent or attorney, shall file with the clerk an affidavit showing that the defendant is indebted to the plaintiff upon a contract, express or implied, for the payment of money, gold dust, or other property then due, which is not secured by a mortgage lien, or pledge upon real or personal property, or is so secured that the security has become insufficient by the act of the defendant, or by any means has become nugatory.

SEC. 180. Before issuing the writ the clerk shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the wrongful suing out of the attachment, not exceeding the sum specified in the undertaking. Said sureties may be required to justify before the clerk of the court to the effect that each, for himself, is worth the amount specified in the undertaking, over and above his debts and liabilities, and property by law exempt from execution in the Territory of Montana: *Provided,* That when the amount claimed by the plaintiff shall be one thousand dollars, or any sum under one thousand dollars, the said undertaking shall be in a sum not less than double the amount claimed: *Provided, also,* When the amount claimed in the affidavit of the plaintiff equals or exceeds the sum of three thousand dollars, the undertaking may be executed by two or more sureties, and they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount is equivalent to that of two sufficient sureties: *Provided, also,* That if such amount claimed by plaintiff in the affidavit, equals or exceeds the sum of ten thousand dollars, an undertaking shall only be required in the sum of ten thousand dollars.

SEC. 181. Actions may be commenced, and writs of attachment issued, upon any debt for the payment of money or specific property, before the same shall have become due, when it shall appear by the affidavit, in addition to what is required in section 179 of this act, first, that the defendant is leaving, or is about to leave this Territory, taking with him or her property, moneys, or other effects, which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or, second, that the defendant is disposing of his property or is about to dispose of his property subject to execution, for the purpose of defrauding his creditors: *Provided,* That any judgment obtained under the provisions of this section shall be with a rebatement of the interest from the time said judgment is rendered until the time at which said debt would have become due: *And provided, also,* That the defendant may, by a plea, put in issue the matter alleged in the affidavit herein required, and if the plaintiff fail to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate.

SEC. 182. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant deposit the amount or give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case, to take such undertaking, several writs may be issued at the same time to the sheriffs of different counties.

SEC. 183. The rights of shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached, and, if judgment be recovered, be sold to satisfy the judgment and execution.

SEC. 184. The sheriff to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in section 182 be not given, as follows:

First. Real property standing upon the records of the county in the name of the defendant, shall be attached by filing a copy of the writ, together with a description of the property attached, with the recorder of the county.

Second. Real property, or any interest therein, belonging to the defendant, and held by any other person, or standing upon the records of the county in the name of any other person (but belonging to the defendant), shall be attached by leaving such person or his agent a copy of the writ and a notice that such real property (giving a description thereof), and any interest therein belonging to the defendant, are attached, pursuant to such writ, and filing a copy of such writ and notice with the recorder of the county.

Third. Personal property capable of manual delivery shall be attached by taking it into custody.

Fourth. Stock or shares, or any interest in stock or shares, of any corporation or company, shall be attached by leaving with the president or other head of the same, or the secretary or cashier of the same, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of defendant is attached in pursuance of such writ.

Fifth. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control such credits and other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Sec. 185. It shall be the duty of the county recorder to file and safely keep such copy of the writ and description of the property, subject to the inspection of all persons; and such recorder shall receive a fee of twenty-five cents for such filing and safe keeping of said list, to be paid by the plaintiff in the action and taxed and allowed to him as other costs and disbursements in the action.

Sec. 186. Upon receiving information in writing from the plaintiff or his attorney that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ, and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

Sec. 187. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice as provided in the last section, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Sec. 188. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff upon such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

SEC. 189. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

SEC. 190. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

SEC. 191. If any personal property attached be claimed under oath by a third party as his property, the sheriff shall deliver the property to such third party within five (5) days, if the plaintiff resides within the county, otherwise ten days, after notice to plaintiff's attorney, unless that plaintiff give to the sheriff good and sufficient bond to indemnify him against loss or damage by reason of holding such property.

SEC. 192. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose, first, by paying the plaintiff the proceeds of all sales of perishable property sold by him, or any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment; second, if any balance remain due, and an execution shall have been issued on the judgment, he shall sell, under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given and the sales conducted as in other cases of sales on execution.

SEC. 193. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 194. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section 197, or he may proceed as in other cases, upon the return of an execution.

SEC. 195. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent. The order of attachment shall be discharged and the property released therefrom.

SEC. 196. The defendant may, at any time, release any property in his hands to the sheriff, by virtue of any writ of attachment, by executing an undertaking as provided for in the next section; and all proceeds of sales and money collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment and delivered to the defendant, upon the justification of the sureties and the undertaking.

SEC. 197. Before releasing such attached property, as aforesaid, to the defendant, the sheriff shall require an undertaking executed by the defendant, and at least two sureties, residents and freeholders, or householders in the county, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, redeliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof, the defendant and sureties will pay to the plaintiff the full value of the property so released. The sheriff may fix the sum for which the undertaking shall be executed, and if necessary, in fixing such sum, to know the value of the property released, the same may be appraised by three disinterested persons, to be appointed by the sheriff; and if any sheriff shall release any property held by him, under or by virtue of any writ of attachment, without first taking such bond as herein required, or shall take an insufficient bond, he and his sureties shall be liable for the value of such property so released.

SEC. 198. The defendant may also, at any time before the time for answering expires, apply, on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or the judge thereof, that the attachment be discharged on the ground that the writ was improperly issued.

SEC. 199. If the motion be made upon affidavits on the part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the order of attachment was made.

SEC. 200. If, upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

SEC. 201. The sheriff shall return the writ of attachment with the summons, if issued at the same time, otherwise within twenty days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

SEC. 202. All liens by attachment shall accrue at the time the property of the defendant shall be attached by the officer charged with the execution of the writ, in the order in which they are levied; and said liens shall not be affected by any subsequent attachment, or by any judgment obtained subsequent thereto: *Provided,* That if two or more attachments shall be levied upon the same property at the same time, they shall share *pro rata* in the proceeds of said property; but in all cases the first attachment levied shall be first satisfied: *Provided, further,* That the first writ placed in the hands of the officer shall be levied first.

Sec. 203. There shall be kept in the recorder's office of the county recorder of each county, a book called "Attachment Book," in which shall be entered by such recorder, in alphabetical form, the names of any person or persons against whom any writ or notice of attachment has been filed in his office; there shall also be entered in said book the time such writ was filed. Such entries shall be made under appropriate heads for that purpose. For making such entry the recorder shall receive twenty-five cents, to be paid by the plaintiff in the action, and taxed and allowed to him as other costs and disbursements in the action.

CHAPTER V.

ATTACHMENT OF BOATS.

Sec. 204. *For what boats may be attached.*
Sec. 205. *Claims that are liens upon boats.*
Sec. 206. *Priority of liens.*
Sec. 207. *Limitation of actions against boats.*
Sec. 208. *When lien to attach.*
Sec. 209. *Liability of rafts; proceedings same as against boats.*
Sec. 210. *Proceedings, how commenced.*
Sec. 211. *Description of boat.*
Sec. 212. *Summons, how served.*
Sec. 213. *Who may serve summons.*
Sec. 214. *Who may appear for defendant; no continuance granted plaintiff.*
Sec. 215. *Boat may be discharged before judgment, by giving bond.*
Sec. 216. *Execution against boat.*
Sec. 217. *What officer may sell to satisfy execution.*
Sec. 218. *Status of purchaser of fractional interest.*
Sec. 219. *Plaintiff's right to otherwise sue not affected.*
Sec. 220. *Sufficient allegation that services were rendered boat.*

Sec. 204. Any boat found within the waters of this Territory is liable—

First. For all debts contracted by the master, owner, agent, clerk, or consignee thereof, on account of supplies furnished for the use of such boat, or on account of work done or materials furnished in building, repairing, fitting out, furnishing, or equipping such boat.

Second. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract relative to the transportation of persons or property, entered into by the master, owner, agent, clerk, or consignee thereof.

Third. For all injuries to persons or property by such boat, or by the officers or crew, done in connection with the business of such boat.

Sec. 205. Claims growing out of any of the above causes are liens upon such boat, its apparel, tackling, furniture, and appendages, including barges and lighters, if owned by the owners of such boat, and used therewith, at the time suit is commenced.

Sec. 206. Such liens shall take preference of any claim against the boat itself, or any or all of its owners, growing out of any other causes than those above enumerated, and as between themselves they shall be preferred in the following order:

First. Those resulting from wages for services on board such boat within the year then passed: *Providing,* That suit is brought within twenty days after the cessation of such labor.

Second. Those resulting from contracts made within this Territory.

Third. All other causes.

Sec. 207. Actions against boats under the provisions of this act shall not be brought after the lapse of one year from the time the cause of action accrued.

Sec. 208. The lien shall attach from the commencement of suit, subject only to such other liens as are of a preferred class.

Sec. 209. Any raft found in any of the waters of this Territory shall be liable for all debts contracted by the owner, clerk, pilot, or agent thereof, on account of work done or services rendered for such raft.

Claims growing out of either of the above causes shall be liens upon the raft, its tackling and appendages, for the term of twenty days from the time the right thereof accrued, and the same rules shall govern, and the same process shall be had, that are prescribed for similar liens against boats.

Sec. 210. Any person desiring to take the benefit of this act shall file with any judge or clerk of any court, or justice of the peace, having jurisdiction, a complaint in writing, duly verified by the plaintiff, or his agent or attorney, which complaint shall show that the plaintiff is entitled to the benefit of this act; whereupon such judge, clerk, or justice of the peace, shall issue his warrant to the proper officer, commanding him to seize the boat, its tackling, apparel, furniture, and appendages, and detain the same until released by due course of law.

Sec. 211. The complaint shall describe the boat by name as defendant, but if it have no name, then by such description as will enable the officer attaching to seize the proper property.

Sec. 212. The usual summons shall be issued, directed to the boat by name, or to the property to be attached, if no name appear, and be served upon the master, owner, clerk, agent, or consignee thereof, and if none of them can be found, by posting up a copy in some conspicuous part of the boat, or property to be attached.

The warrant shall be served according to the directions it contains.

Sec. 213. Any sheriff, constable or city marshal, or marshal of the Territory, may serve the warrant and summons above mentioned, whether the same issue from the office of the clerk, or from a judge or justice of the peace, and any clerk, judge or justice may in his discretion appoint any suitable person to serve such summons and warrant, who shall have all the power of a sheriff in the premises.

Sec. 214. Any master, agent, clerk, consignee, or other person interested in the boat, may appear by himself, his agent, or attorney, for the defendant, and conduct the defence of the suit, and no continuance shall be granted to the plaintiff while the boat is in custody.

Sec. 215. The boat may be discharged at any time before final judgment, by giving bonds with at least two sureties, to be approved by the officer serving the warrant, or by the clerk, judge, or justice who issued it, in a penalty double the plaintiff's demand and costs, conditioned that the obligors will pay the amount found due to the plaintiff with costs.

SEC. 216. If judgment be rendered against the boat before it is discharged, as provided in the last section, execution shall be issued against it, together with its apparel, tackling, furniture, and appendages.

SEC. 217. The officer may sell any of the furniture and appendages of the boat, if by doing so he can satisfy the demand; if he sell the boat itself he must sell it to the bidder who will advance the amount necessary to satisfy the execution for the lowest fractional share of the boat, unless the person appearing for the boat require a different and equally convenient mode of sale.

SEC. 218. If fractional share of the boat be thus sold, the purchaser shall hold such share or interest jointly with the owners.

SEC. 219. Nothing herein contained shall affect the right of a plaintiff to sue in the same manner as though this act had not been enacted.

SEC. 220. It shall be sufficient for the plaintiff to allege in his complaint or affidavit, that the services were rendered or material was furnished the boat by its name.

CHAPTER VI.

RECEIVERS.

Sec. 221. *In what cases the court may appoint a receiver.*
Sec. 222. *Upon the dissolution of a corporation the court may appoint a receiver.*
Sec. 223. *A party or attorney not to be appointed without consent of parties; ex parte application.*
Sec. 224. *Oath and undertaking of receiver.*
Sec. 225. *Powers of receiver.*
Sec. 226. *Funds in receiver's hands may be invested by consent.*

SEC. 221. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

First. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to, or interest in, the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

Second. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

Third. After judgment to carry the judgment into effect.

Fourth. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

Fifth. In cases when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights.

Sixth. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

SEC. 222. Upon the dissolution of any corporation, the district courts of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding indebtedness thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

SEC. 223. No party or attorney, or person interested in an action, can be appointed receiver therein, without the written consent of the parties, filed with the clerk. If a receiver be appointed upon an *ex parte* application, the court, before making the order, may require from the applicant an undertaking with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver, and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause, and the court may in its discretion, at any time after said appointment, require an additional undertaking.

SEC. 224. Before entering upon his duties the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court or judge, execute an undertaking to such person, and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

SEC. 225. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same; to make transfers, and generally to do such acts respecting the property as the court may authorize.

SEC. 226. Funds in the hands of a receiver may be invested upon interest by order of the court; but no such order can be made except upon the consent of all the parties to the action.

CHAPTER VII.

DEPOSIT IN COURT.

Sec. 227. *When money deposited in court.*
Sec. 228. *Disposition of money deposited.*
Sec. 229. *Power of court when order to deposit money disobeyed.*

SEC. 227. When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

SEC. 228. If the money is deposited in court it must be paid to the clerk, who must deposit it with the county treasurer, by him to be held subject to the order of the court. For the safe keeping of the money deposited with him the treasurer is liable on his official bond.

SEC. 229. Whenever, in the exercise of its authority, a court has ordered a deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or thing and deposit or deliver it in conformity with the direction of the court.

TITLE VIII.

JUDGMENTS IN GENERAL.

CHAPTER 1.

Sec. 230. *Judgment defined.*
Sec. 231. *May be given for or against one or more of either parties.*
Sec. 232. *Judgment against one or more defendants, and action as to others.*
Sec. 233. *What relief granted plaintiff.*
Sec. 234. *Dismissal of action or non-suit entered, when.*
Sec. 235. *Judgment upon the merits.*

SEC. 230. A judgment is the final determination of the rights of the parties in an action or proceeding.

SEC. 231. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

SEC. 232. In an action against several defendants the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper.

SEC. 233. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

SEC. 234. An action may be dismissed, or a judgment of a non-suit entered, in the following cases:

First. By the plaintiff himself at any time before the trial, upon the payment of costs, if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon.

Second. By either party upon the written consent of the other.

Third. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

Fourth. By the court, when, upon trial, and before the final submission of the case, the plaintiff abandons it.

Fifth. By the court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury.

The dismissal mentioned in the first two sub-divisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

SEC. 235. In every case, other than those mentioned in the last section, the judgments shall be rendered upon the merits.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

Sec. 236. When judgment rendered upon defendant failing to answer.

SEC. 236. Judgment may be had if the defendant fail to answer the complaint, as follows:

First. In an action arising upon a contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in Section 75.

Second. In other actions, if no answer has been filed with the clerk within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant; and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account or the proof of any fact be necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof; or may, in its discretion, order a reference for that purpose; and where the action is for the recovery of damages in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be necessary, by a reference as above provided.

Third. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the Territory, shall require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

ISSUES—THEIR MODE OF TRIAL.

Sec. 237. *When issues arise and their kind..*
Sec. 238. *Issues of law.*
Sec. 239. *Issues of fact.*
Sec. 240. *Trial of issue of law.*
Sec. 241. *What issues tried by the jury, issue of law first disposed of.*
Sec. 242. *Causes entered upon the calendar.*
Sec. 243. *Either party may bring issue to trial.*
Sec. 244. *How trial may be postponed.*
Sec. 245. *If trial postponed, testimony of witnesses may be taken.*

SEC. 237. An issue arises when a fact or conclusion of law is maintained by the one party and is controverted by the other. Issues are of two kinds—first, of law; and, second, of fact.

SEC. 238. An issue of law arises upon a demurrer to the complaint or answer, or replication, or to some part thereof.

SEC. 239. An issue of fact arises, first, upon a material allegation in the complaint, controverted by the answer; and, second, upon new matter in the answer controverted by the replication, or upon new matter in the replication, except an issue of law is joined thereon.

SEC. 240. An issue of law must be tried by the court, unless it is referred upon consent.

SEC. 241. In actions for the recovery of specific real property with or without damages, and for an injunction to stay waste, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered by consent of the parties. In all cases where there are issues of both law and fact, the issues of law must be first disposed of, and in all cases issues of fact must be tried by a jury (except in actions which involve the settlement of accounts between parties), unless a jury shall be waived by the parties.

SEC. 242. The clerk shall enter causes upon the calendar of the court according to the date of the issue. Causes once placed upon the calendar for a general or special term, if not tried or heard at such term, shall remain upon the calendar from court to court until finally disposed of.

SEC. 243. Either party may bring the issue to a trial, or to a hearing, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case, and take a dismissal of the action, or verdict, or a judgment, as the case may require.

SEC. 244. A motion to postpone a trial on grounds of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed; and upon terms the court may, in its discretion, upon good cause shown, and in furtherance of justice, postpone a trial or proceeding upon other grounds than the absence of evidence.

SEC. 245. The party postponing a trial in any court of record, shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken, before any judge or clerk of the court in which the cause is pending, or before a notary public, or other officer authorized to take depositions, as the court may indicate, which shall accordingly be done; and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witness was produced.

CHAPTER IV.

FORMATION OF THE JURY.

Sec. 246. *Jury, how drawn. Of what number to consist.*
Sec. 247. *Oath of jurors.*
Sec. 248. *Challenge of jurors.*
Sec. 249. *Grounds of challenge for cause.*
Sec. 250. *Challenge for cause, how tried.*
Sec. 251. *Order of challenge.*
Sec. 252. *Vacancy in jury, how filled.*

SEC. 246. When the action is called for trial by jury, the clerk shall prepare separate ballots, containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballot becomes exhausted before the jury is complete, or if from any cause a juror is excused or discharged, the clerk shall, under the direction of the court, draw from the box furnished by the county commissioners, as provided by law, so many additional names as shall be necessary, in the manner provided by law, and if the names in the box are exhausted before the jury is complete, the sheriff shall summon, under the direction of the court, from the citizens of the vicinity, and not from bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the clerk in the minutes of the trial.

SEC. 247. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance: That they, each of them, will well and truly try the matter at issue between ———, the plaintiff, and ———, the defendant, and a true verdict render according to the evidence.

SEC. 248. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and shall be either peremptory or for cause. Each party shall be entitled to four peremptory challenges. Either party shall have the right to have the whole jury sworn to answer questions as to their competency in the first instance, and may examine them on any of the matters of challenge for cause.

SEC. 249. Challenges for cause may be taken on one or more of the following grounds:

First. A want of any of the qualifications prescribed by statute to render a person competent as a juror.

Second. Consanguinity or affinity within the third degree to either party.

Third. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party.

Fourth. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action.

Fifth. Interest on the part of a juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member or citizen of a municipal corporation.

Sixth. Having formed or expressed an unqualified opinion or belief as to the merits of the action.

Seventh. The existence of a state of mind in the juror evincing enmity against, or bias to, either party.

SEC. 250. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

SEC. 251. The plaintiff first, and afterwards the defendant, shall complete his challenges for cause; they may then alternately, in the same order, have the right to challenge peremptorily.

SEC. 252. After each challenge sustained, the vacancy shall be filled before further challenges are made, and any new juror introduced may be challenged for cause, or if the party shall not have exhausted the number of peremptory challenges to which he is entitled, he may be challenged peremptorily.

CHAPTER V.

CONDUCT OF THE TRIAL.

Sec. 253. *Order of procedure on trial; instructions and exceptions thereto.*
Sec. 254. *Jury may view property or place.*
Sec. 255. *Proceeding if juror become sick.*
Sec. 256. *Retirement of jury, how kept together.*
Sec. 257. *What papers jury may take upon retiring.*
Sec. 258. *Disagreement of jury as to testimony or law.*
Sec. 259. *If no verdict, action tried again.*
Sec. 260. *Adjournment of court and sealed verdict.*
Sec. 261. *Proceedings when jury have agreed, and of the verdict and polling the jury.*
Sec. 262. *How informal or insufficient verdict corrected.*
Sec. 263. *If jury separate, admonished by court.*

SEC. 253. When the jury has been sworn, the trial shall proceed in the following order, unless the court, for good cause and special reasons, otherwise directs:

First. The party on whom rests the burden of the issues may briefly state his case, and the evidence by which he expects to sustain it.

Second. The adverse party may then briefly state his defence, and the evidence he expects to offer in support of it.

Third. The party on whom rests the burden of the issues must first produce his evidence, the adverse party will then produce his evidence.

Fourth. The parties will then be confined to rebutting evidence, unless the court, for good reason, in furtherance of justice, permits them to offer evidence in their original case.

Fifth. When the evidence is concluded, and either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered and signed by the party or his attorney asking the same, and delivered to the court.

Sixth. When the argument of the cause is concluded, the court shall give such instructions to the jury as may be necessary, which instructions shall be in writing, and be numbered and signed by the judge.

Seventh. Where either party asks special instructions to be given to the jury, the court shall either give each instruction as requested, or positively refuse to do so, or give the instruction with a modification, and shall mark or endorse upon each instruction so offered in such manner that it shall distinctly appear what instructions were given in whole or in part, and, in like manner those refused, so that either party may except to the instructions as given or refused or modified, or to the modification. All instructions given by the court must be filed together with those refused, as a part of the record. If any party to the trial desires to except to any instruction given by the court, or to the refusal of the court to give an instruction asked for, or any modification thereof, he shall reduce such exception to writing, and file the same with the clerk before the cause is submitted to the jury.

Sec. 254. Whenever, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent no person other than the person so appointed shall speak to them on any subject connected with the trial.

Sec. 255. If, after the impannelling of a jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or a new jury may be sworn and the trial begun anew; or the jury be discharged and a new jury then or afterwards impannelled.

Sec. 256. After hearing the charge, the jury may either decide in court or retire in deliberation. If they retire they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

SEC. 257. Upon retiring for deliberation, the jury may take with them all papers, except depositions, accounts, or account-books, which have been received as evidence in the case, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

SEC. 258. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court; upon their being brought into court the information required shall be given in presence of, or after notice to, the parties or counsel.

SEC. 259. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried, immediately or at a future time, as the court shall direct.

SEC. 260. While the jury are absent the court may adjourn from time to time, in respect to other business; but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

SEC. 261. When the jury have agreed upon their verdict they must be conducted into court, their names called by the clerk, and their verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. If any jurors disagree, they must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If any one answers in the negative the jury must again be sent out.

SEC. 262. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, or in any particular, the verdict may be corrected by the jury under the advice of the court, or the jury may be again sent out.

SEC. 263. If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person on the subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

CHAPTER VI.

THE VERDICT.

Sec. 264. *Verdict, general or special defined.*
Sec. 265. *When may be general or special; special finding controls general verdict.*
Sec. 266. *When jury to find amount of recovery.*
Sec. 267. *If for specific personal property, value to be assessed.*
Sec. 268. *Entry of clerk upon receiving verdict.*

Sec. 264. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of plaintiff or defendant; a special verdict is that by which the jury finds the facts only, leaving the judgment to the court. The special verdict shall present the conclusion of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

Sec. 265. In an action for the recovery of money only, or specific property, the jury, in their discretion may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict the former shall control the latter, and the court shall give judgment accordingly.

Sec. 266. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

Sec. 267. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property (but failure to find all the facts mentioned in this section shall not invalidate the verdict), and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Sec. 268. Upon receiving a verdict an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER VII.

TRIAL BY COURT.

Sec. 269. *How trial by jury may be waived.*
Sec. 270. *Judgment to be entered according to findings, etc.*
Sec. 271. *When reference may be ordered.*
Sec. 272. *Procedure on judgment upon issue of law.*

SEC. 269. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract or for the recovery of specific real or personal property with or without damages, and with the assent of the court, in other actions, in manner following:

First. By failing to appear at the trial.

Second. By written consent, in person or by attorney, filed with the clerk.

Third. By oral consent, in open court, entered in the minutes.

SEC. 270. Upon a trial of issue of fact by the court, judgment shall be entered in accordance with the finding of the court, and the finding, if required by either party, shall be reduced to writing and filed with the clerk. In the finding filed, the facts found and the conclusions of law shall be separately stated. In such cases no judgment shall be reversed on appeal, for want of a finding in writing, at the instance of any party who at the time of the submission of the cause shall not have requested a finding, in writing, and had such request entered in the minutes of the court; nor in cases tried by the court, by a commissioner, or a referee, shall the judgment be reversed on appeal, for defects in the finding; and in cases of exceptions for defective findings, the particular point or issue upon which the party requires a finding to be made, or the particular defect to be remedied, shall be specifically and particularly designated; and upon failure of the court to remedy, or, when tried by a commissioner or referee, to cause to be remedied by such commissioner or referee, the alleged defect, the party moving shall be entitled to his exceptions, and the same shall be settled by the judge as in other cases: *Provided,* That such exceptions shall be filed in the court and served on the attorney of the adverse party within five days after receiving from or giving to the adverse party written notice of the filing and finding: *Provided,* That when any cause is tried and submitted upon a written statement of facts agreed to by the parties or their attorneys, such statement shall have the effect of a special verdict or finding of facts, and judgment shall be pronounced thereon as upon a special verdict or finding of facts; and in such case no finding of facts shall be made unless such statement shall fail to embrace all the facts proved and in issue, in which case any additional fact may be found upon evidence which is not repugnant to the agreed statement.

SEC. 271. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered.

SEC. 272. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two sub-divisions of Section 236, upon the failure of defendant to answer. If judgment be for the defendant upon an issue of law, and the taking of an account or the proof of any fact be necessary to enable the court to complete the judgment, a reference may be ordered as in that section provided.

CHAPTER VIII.

OF REFERENCES AND TRIALS BY REFEREES.

Sec. 273. *Reference by agreement.*
Sec. 274. *Court may order a reference.*
Sec. 275. *Who may be, and oath of, referee.*
Sec. 276. *Grounds of objections to referee.*
Sec. 277. *Hearing of objection to referee.*
Sec. 278. *Report of referee, exceptions to.*

SEC. 273. A reference may be ordered upon the agreement of the parties, filed with the clerk or entered on the minutes:

First. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon.

Second. To ascertain a fact necessary to enable the court to proceed and determine a case.

SEC. 274. When the parties do not consent the court may, upon application of either, or of its own motion, direct a reference in the following cases:

First. When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

Second. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

Third. When a question of fact other than upon the pleading arises, upon motion or otherwise, in any stage of the action.

Fourth. When it is necessary for the information of the court in a special proceeding.

SEC. 275. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge shall appoint one or more referees, not exceeding three, who reside in the county where the action or proceeding is triable, and against whom there is no legal objection, or the reference may be made to a court commissioner of the county where the cause is pending. Every referee, before acting as such, shall take and subscribe an oath (or affirmation), before some authorized officer, which shall be filed with the clerk of the court by which he is appointed, that he will honestly, impartially and faithfully perform the duties of referee in the action or matter referred to him, as required by law, to the best of his knowledge and ability.

SEC. 276. Either party may object to the appointment of any person as referee on one or more of the following grounds:

First. A want of any of the qualifications prescribed by statute to render a person competent as a juror.

Second. Consanguinity or affinity within the third degree to either party.

Third. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party.

Fourth. Having served as a juror or been a witness on any trial between the same parties for the same cause of action.

Fifth. Interest on the part of such person in the event of the action, or in the main question involved in the action.

Sixth. Having formed or expressed an unqualified opinion or belief as to the merits of the action.

Seventh. The existence of a state of mind in such person evincing enmity against or bias to either party.

Sec. 277. The objection taken to the appointment of any person as referee shall be heard and disposed of by the court. Affidavits may be read and any person examined as a witness as to such objections.

Sec. 278. The referees or commissioner shall report their findings in writing to the court within ten days (or within such further time as may be allowed by the court) after the testimony shall have been closed and the facts found, and the conclusions of law shall be separately stated therein. The finding of the referees or commissioner upon the whole issue shall stand as the finding of the court, and upon filing of the finding with the clerk of the court judgment may be entered thereon in the same manner as if the action had been tried by the court. The finding of the referees or commissioner may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the finding reported shall have the effect of a special verdict.

CHAPTER IX.

EXCEPTIONS.

Sec. 279. *What are exceptions, and how regarded.*
Sec. 280. *What deemed to have been excepted to.*
Sec. 281. *Points of exception to be stated, and must be conformable to truth or be corrected.*
Sec. 282. *Form of exception to be brief.*
Sec. 283. *When, on motion for new trial exceptions deemed taken.*

Sec. 279. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, court or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge of a jury, or at any other time, from the calling of the action for trial to the rendering of the verdict or decision; but no exceptions shall be regarded on a motion for a new trial or an appeal, unless the exception be material and affect the substantial rights of the parties.

Sec. 280. The verdict of the jury, the final decision in an action or proceeding, an interlocutory order, or decision finally determining the rights of the parties, or some of them; an order or decision from which an appeal may be taken; an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance; an order made upon *ex parte* application, and an order or decision made in absence of a party, are deemed to have been excepted to.

Sec. 281. The point of the exception shall be particularly stated, except as provided in relation to instructions, and may be delivered in writing to the judge, or if the party require it, it shall be written down by the clerk. When delivered in writing or written down by the clerk it shall be made conformable to the truth or be at the time corrected until it is made so conformable. When not delivered in writing, or written down as above, it may be entered in the judge's minutes, and afterwards settled in a statement of the case as provided in this act: *Provided,* That if the judge shall in any case refuse to allow an exception in accordance with the facts, any party aggrieved thereby may petition the supreme court for leave to prove the same, and shall have the right to do so in such mode and manner, and according to such regulations, as the supreme court may by rule prescribe.

SEC. 282. No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more, and the whole as briefly as possible.

SEC. 283. When a cause has been tried by the court or by the referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on motion for a new trial, or on appeal, without any special notice that an exception is taken thereto.

CHAPTER X.

NEW TRIALS.

Sec. 284. *New trial defined.*
Sec. 285. *Causes for new trial.*
Sec. 286. *How motion for new trial made.*
Sec. 287. *Notice of motion for new trial: First, upon affidavits. Second, upon bill of exceptions. Third, upon statement. Fourth, insufficiency of evidence.*
Sec. 288. *When motion heard and what references may be made.*
Sec. 289. *When proceedings may be stayed.*

SEC. 284. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referees.

SEC. 285. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of said party:

First. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion, by which either party was prevented from having a fair trial.

Second. Misconduct of the jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict, or to a finding on any question or questions submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavits of any one or more of the jurors.

Third. Accident or surprise, which ordinary prudence could not have guarded against.

Fourth. Newly discovered evidence, material for the party making the application.

SEC. 286. When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section, it must be made upon affidavits; for any other cause it may be made at the option of the moving party, either upon the minutes of the court, or a bill of exceptions, or a statement of the case prepared as hereinafter provided.

SEC. 287. The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action was tried by a jury, or after notice of the decision of the court or referee, if the action was tried without a jury, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the court, or a bill of exceptions, or a statement of the case:

First. If the motion is to be made upon affidavits, the moving party must, within ten days after serving the notice, or such further time as the court in which the action is pending or a judge thereof may allow, file such affidavits with the clerk and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party.

Second. If the motion is to be made upon a bill of exceptions and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after service of the notice to prepare and obtain a settlement of a bill of exceptions as is provided after the entry of judgment, or after receiving notice of such entry provided by section 281, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed when the notice of motion is given, such bill shall be used on the motion.

Third. If the motion is to be made upon a statement of the case, the moving party must, within ten days after the service of the notice, or such further time as the court in which the action is pending, or the judge thereof, may allow, prepare a draft of the statement, and serve the same, or a copy thereof, upon the adverse party. If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same, or a copy thereof, upon the moving party. If the amendments be adopted, the statement shall be amended accordingly, and then presented to the judge who tried or heard the cause for settlement, or be delivered to the clerk of the court for the judge. If not adopted, the proposed statement and amendments shall, within ten days thereafter, be presented by the moving party to the judge, upon five days' notice to the adverse party, or delivered to the clerk of the court for the judge; and thereupon the same proceedings for the settlement of the statement shall be taken by the parties and clerk and judge as are required for the settlement of bills of exceptions by section 281. If the action was heard by a referee, the same proceedings shall be had for the settlement of the statement by him as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or, if served, are allowed, the proposed statement and amendments, if any, may be presented to the judge or referee for settlement without notice to the adverse party.

When the notice for the motion designates, as the ground of the motion, the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of motion, errors in law occurring at the trial, and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the judge or referee, in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the case, notwithstanding the assent of the parties to such redundant or useless matter, or to any inaccurate statement. When settled, the statement shall be signed by the judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

Fourth. When the motion is to be made upon the minutes of the court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of motion must specify the particulars in which the evidence is alleged to be insufficient, and if the ground of the motion be errors in law occurring at the trial and excepted to by the moving party, the notice must specify the particular errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the court, the motion must be denied.

Sec. 288. The application for a new trial shall be heard at the earliest practicable period after the notice of the motion, if the motion is to be heard upon the minutes of the court, and in other cases after the affidavits, bills of exception, or statement, as the case may be, are filed, and may be brought to a hearing upon motion of either party. On such hearing, reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and phonographic report of the testimony on file.

Sec. 289. On all cases where notices of intention to move for a new trial in accordance with the provisions of chapter ten of the civil practice act, entitled "New Trial," shall have been given, the judge of the court in which the trial shall have been had may, upon such terms as in his opinion shall be just, make an order staying proceedings in the cases until the motion for new trial shall have been disposed of.

CHAPTER XI.

THE MANNER OF GIVING AND ENTERING JUDGMENT.

Sec. 290. *Judgment entered upon verdict; in favor of defendant for excess.*
Sec. 291. *Judgment for recovery of personal property.*
Sec. 292. *Clerk to keep a "Judgment Book."*

Sec. 293. *Judgment after death of party no lien on real property.*
Sec. 294. *Judgment roll, what constitutes.*
Sec. 295. *Lien of judgment.*
Sec. 296. *Judgment docket, how kept.*
Sec. 297. *Docket open during office hours.*
Sec. 298. *Transcript filed in another county to be a lien.*
Sec. 299. *Entry of satisfaction of judgment.*
Sec. 300. *When transcript of judgment from justice becomes a lien.*

SEC. 290. When trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

When the case is reserved for argument or further consideration, as mentioned in this section, it may be brought by either party before the court for argument.

If a counter claim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess, or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

SEC. 291. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession of the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

SEC. 292. The clerk shall keep among the records of court a book for the entry of judgments, to be called the "Judgment Book," in which each judgment shall be entered, and shall specify clearly the relief granted or other determination of the action.

SEC. 293. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon; such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

SEC. 294. Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment roll:

First. In case the complaint be not answered by any defendant, the summons with the affidavit or proof of service, and the complaint, with a memorandum endorsed upon the complaint that the default of the defendant in not answering was entered, and a copy of the judgment.

Second. In all other cases, the summons, pleadings, verdict of the jury, or finding of the court, commissioner, or referee, all bills of exceptions taken and filed in said action, copies of orders sustaining or overruling demurrers, a copy of the judgment, and copies of any orders relating to a change of parties.

SEC. 295. Immediately after filing a judgment roll, the clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it shall become a lien upon the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time, or which he may afterward acquire, until said lien expires. The lien shall continue for six years, unless the judgment be previously satisfied.

SEC. 296. The docket mentioned in the last section is a book which the clerk shall keep in his office, with each page divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; judgment, time of entry; where entered into the judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket, under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

SEC. 297. The docket kept by the clerk shall be open at all times during office hours for the inspection of the public, without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such manner as to facilitate their inspection.

SEC. 298. A transcript of the original docket, certified by the clerk, may be filed with the recorder of any other county, and from the time of filing, the judgment shall become a lien upon all the real property of judgment debtor, not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for six years, unless the judgment be previously satisfied.

SEC. 299. Satisfaction of a judgment may be entered in the clerk's docket upon the execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or by his endorsement on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment, or make such endorsement, and upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

SEC. 300. A transcript of any judgment rendered by any justice of the peace, duly certified by said justice, may be filed with the recorder of the county in which such judgment shall have been rendered, and from the time of the filing of such judgment shall become a lien upon all the property of the judgment debtor, except personal property and property exempt from execution in such county, in the same manner and to the same extent as if such judgment had been originally rendered in a court of record. Said lien shall continue for six years, unless the judgment be previously satisfied.

TITLE IX.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

THE EXECUTION.

Sec. 301. *Execution may issue within six years.*
Sec. 302. *Form of writ; shall be directed to sheriff and require him: First: Against property of debtor. Second: Against property in hands of representatives. Third: Against the person. Fourth: For delivery of possession.*
Sec. 303. *What to direct if all defendants not served with summons.*
Sec. 304. *Return of writ; duty of clerk if real estate levied on.*
Sec. 305. *Mode of procedure in enforcing execution in different cases.*
Sec. 306. *How issued and enforced in case of the death of a party.*
Sec. 307. *May issue to another county where defendant has property.*
Sec. 308. *Property liable to execution; and not affected until levy.*
Sec. 309. *Property levied upon claimed by third party.*
Sec. 310. *Property exempt from execution.*
Sec. 311. *Homestead exemption.*
Sec. 312. *Homestead exemption not to affect certain liens.*
Sec. 313. *Selection of homestead.*
Sec. 314. *Proceedings if plaintiff dissatisfied with selection of homestead.*
Sec. 315. *When dwelling-house on leased land exempt.*
Sec. 316. *Homestead exempt after death of owner.*
Sec. 317. *Removal or sale not to affect exemption.*
Sec. 318. *Right of widow to homestead.*
Sec. 319. *Only to apply to married men or head of family.*
Sec. 320. *Manner in which writ shall be executed.*
Sec. 321. *Notice of sale of property on execution.*
Sec. 322. *Penalty of selling without notice.*
Sec. 323. *Sales; judgment debtor may direct order of sale.*
Sec. 324. *If purchaser refuse to pay, to be sold again, and bidder liable for loss.*
Sec. 325. *Subsequent bids of person refusing to pay may be rejected.*
Sec. 326. *Liability of officer under last two sections.*
Sec. 327. *Delivery of property and certificate to purchaser.*
Sec. 328. *Certificate of sale and payment.*
Sec. 329. *Rights of purchaser to real property; Certificate of sale.*
Sec. 330. *Real estate sold may be redeemed.*
Sec. 331. *Right of judgment debtor or redemptioner to redeem from purchaser.*
Sec. 332. *Right to redeem from redemptioner.*
Sec. 333. *Payments, to whom made under last two sections.*
Sec. 334. *Procedure for redemption.*
Sec. 335. *Court may restrain waste until redemption.*
Sec. 336. *If purchaser be evicted he may recover price paid, and original judgment may be revived.*
Sec. 337. *Contribution between judgment debtors and notice of claim thereof.*

Sec. 301. The party in whose favor judgment is given may, at any time within six years after the entry thereof, issue a writ of execution for its enforcement as prescribed in this chapter.

Sec. 302. The writ of execution shall be issued in the name of the people of the Territory of Montana, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and shall require the sheriff substantially as follows:

First. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment with interest, out of the personal property of such debtor; and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or any time thereafter.

Second. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property.

Third. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law.

Fourth. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, damages, rents or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in the first sub-division of this section.

Sec. 303. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action.

Sec. 304. The execution may be made returnable at any time, not less than ten nor more than sixty days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed. When the execution shall have been returned, it shall be the duty of the clerk to attach the same to the judgment roll. If any real estate be levied upon, the clerk shall record the execution and return thereof at large, and certify the same under his hand as true copies, in a book to be called the "Execution Book," which book shall be indexed, with the names of plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours, for the inspection of the public, without charge, and shall be evidence of the contents of the originals, whenever they, or any part thereof, may be destroyed, lost or mutilated.

SEC. 305. When the judgment is for money or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor after the return of an execution against his property unsatisfied in whole or in part. When the judgment requires the sale of the property the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity therewith. When the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby, or by law, to obey the same, and obedience thereto may be enforced by the court.

SEC. 306. Notwithstanding the death of a party after judgment, execution thereon may be issued in case of the death of the plaintiff, the same as if he were living, upon the application of his executor or administrator, or successor in interest, by the court in which the judgment was rendered or exists; and in case of the decease of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued and executed against the property recovered in the same manner and with the same effect as if he were still living.

SEC. 307. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in the Territory. Where it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

SEC. 308. All goods, moneys, chattels, and other property, both real and personal, or any interest therein of the judgment debtor not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

SEC. 309. If any personal property levied upon be claimed under oath by a third party as his property, the sheriff shall deliver the property to such third person within five days after notice to plaintiff's attorney, if the plaintiff resides in the county, otherwise ten days, unless the plaintiff gives the sheriff good and sufficient bond to indemnify him against any loss or damage by reason of holding such property.

Sec. 310. The following property shall be exempt from execution, except as herein otherwise provided:

First. In all cases wearing apparel of the judgment debtor and family; also all chairs, tables, desks, and books, to the value of one hundred dollars; and also all necessary household, table and kitchen furniture of the judgment debtor, including stoves, stovepipes and stove furniture, beds, bedding, and bedsteads and provisions and fuel provided for individual or family use sufficient for two months, and also one horse, two cows with their calves, two swine, and fifty domestic fowls.

In addition to the above mentioned property, there shall be exempt the following named property:

First. To a farmer: Farming utensils or implements of husbandry, not exceeding in value six hundred dollars; also, two oxen, or one horse or mule, and their harness, one cart or wagon, and food for such oxen, horse, cows, or mule, for three months; also, all seeds, grain, or vegetables, actually provided, reserved, or on hand, for the purpose of planting or sowing at any time within six months, not exceeding in value the sum of two hundred dollars.

Second. To a mechanic or artizan: Tools or implements necessary to carry on his trade.

Third. To a surgeon physician or surgeon and dentist: The instruments and chest necessary to the exercise of his profession, with his scientific and professional libraries.

Fourth. To attorneys at law and ministers of the gospel: The law libraries of attorneys and counselors, and the libraries of ministers of the gospel.

Fifth. To a miner: His cabin or dwelling, not exceeding in value the sum of five hundred dollars; also, his sluices, pipes, hose, windlasses, derrick, cars, pump, tools, implements, and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hundred dollars, and one horse, mule, or two oxen, with their harness, and food for such horse, mule, or oxen, for three months, when necessary to be used for any whim, windlass, derrick, car, pump, or hoisting gear.

Sixth. To a cartman, huckster, peddler, teamster, or laborer: One horse or mule, or two oxen, and their harness, and one cart or wagon, by the use of which such person habitually earns his living; and one vehicle and harness or other equipments used by a physician or surgeon or minister of the gospel in making his professional visits, with food for such horse, mule, or oxen, for three months.

Seventh. All fire engines, hooks and ladders, with the carts, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department, organized under any law of this Territory.

Eighth. All arms, uniforms, and accoutrements, required by law to be kept by any person.

Ninth. All court houses, jails, public offices and buildings, lots, grounds, and personal property; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the court house, jail, and public offices belonging to any county of this Territory; and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of the fire departments and military organizations, and the lots of ground thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this Territory; but no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon.

Tenth. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of the execution, or levy of attachment, when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of his family residing in this Territory, supported wholly or in part by his labor.

In addition to the property now exempted by law from sale or levy on execution, there shall be exempted one sewing machine, of a value not exceeding one hundred dollars, in actual use by each debtor, or family of the debtor: *Provided,* That nothing in this section shall be held or construed to exempt any property belonging to any person who is not a *bona fide* resident of this Territory.

SEC. 311. A homestead consisting of any quantity of land not exceeding one hundred and sixty acres used for agricultural purposes, and the dwelling house thereon, and its appurtenances, to be selected by the owner thereof, and not included in any town plat, city, or village; or, instead thereof, at the option of the owner, a quantity of land not exceeding in amount one-fourth of an acre, being within a town plat, city, or village, and the dwelling house thereon, and its appurtenances, owned and occupied by any resident of this Territory, shall not be subject to forced sale on execution, or any other final process from a court: *Provided,* Such homestead shall not exceed in value the sum of two thousand five hundred dollars.*

SEC. 312. Such exemption shall not affect any laborer's or mechanic's lien, or extend to any mortgage thereon lawfully obtained; but such mortgage or other alienation of such homestead by the owner thereof, if a married man, shall be void unless the wife join in the execution of the conveyance thereof; and nothing contained in this act shall be so construed as to affect any existing debt or debts contracted in this Territory prior to the passage of this act.

SEC. 313. Whenever a levy shall be made upon the lands or tenements of a householder whose homestead has not been selected and set apart by metes and bounds, such householder may notify the officer at the time of making such levy, of what he regards as his homestead, with a description thereof, within the limits above described, and the remainder alone shall be subject to sale under such levy.

SEC. 314. If the plaintiff in execution shall be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making such levy shall cause the same to be surveyed, beginning at a point to be designated by the owner, and set off in a compact form, including the dwelling house and its appurtenances, to the amount specified in section 311 of this act; and the expense of such survey shall be chargeable on the execution and collected thereupon, if it shall appear after such survey that the owner of such land did not correctly state his metes and bounds, otherwise the expense of such survey shall be borne by the person directing the same.

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*Sec. 311. Amended from 80 to 160 acres by act of February 15th, 1879.

SEC. 315. Any person owning and occupying any dwelling house on land not his own, which land he shall be rightfully in possession of by lease or otherwise, and claiming such house as his homestead, shall be entitled to the exemption of such house.

SEC. 316. Real estate exempt from forced sale on execution or other final process, as the homestead of a family, shall likewise, after the death of the owner thereof, be exempt from the payment of his debts, in all cases in which any infant children of the said owner shall survive him; and no executor or administrator shall have a right to the possession of any real estate so exempted, or to the rents or profits of the same.

SEC. 317. If the owner of a homestead may remove therefrom, or sell and convey the same, such removal or sale and conveyance shall not render such homestead subject or liable to forced sale on execution, or other final process issued against such owner; nor shall any judgment, or decree of a court be a lien on such homestead, for any purpose whatever: *Provided*, That this act shall not be so construed as to in any manner relate to judgments or decrees rendered on the foreclosure of mortgages either equitable or legal.

SEC. 318. On the death of the owner of such homestead, the same shall descend to his widow, and she shall take and hold the same during her natural life, free from the incumbrance of all judgments and claims against the deceased or his estate, except mortgages lawfully executed thereon.

SEC. 319. The provisions contained in sections numbered from section 311 to section 318, inclusive, shall only apply to married men, or the head of a family.

SEC. 320. The sheriff must execute the writ against the property of the judgment debtor, by levying upon a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess of the proceeds over the judgment and accruing costs must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

SEC. 321. Before the sale of property on execution, notice shall be given as follows:

First. In case of perishable property, by posting written notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

Second. In case of other personal property, by posting a similar notice in three public places in the township or city where the sale is to take place not less than five nor more than ten days successively.

Third. In case of real property, by posting a similar notice, particularly describing the property, for twenty days successively, in three public places of the township or city where the property is situated, and also where the property is to be sold, and publishing a brief notice of such sale once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

JOHN DOE } SHERIFF'S SALE.
vs.
RICHARD ROE. }

To be sold at sheriff's sale on the——day of——, 187—, at——
[Here insert a brief description of property.] Signed,
JOHN DOE, *Sheriff.*

Any sheriff publishing a notice not in accordance with this form, and which shall cost more than such a notice, shall not be entitled to any costs for the publication of the same, but shall be personally liable for the payment of such publication.

SEC. 322. An officer selling without the notice prescribed by the last section shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages, and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfei five hundred dollars.

SEC. 323. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, it shall be within view of those that attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately; and the sheriff shall be bound to follow such directions.

SEC. 324. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

SEC. 325. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

SEC. 326. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

Sec. 327. When the purchaser of any personal property capable of manual delivery shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and, if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title, and interest which the debtor had in and to such property on the day the execution was levied.

Sec. 328. When the purchaser of any personal property not capable of manual delivery shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title and interest which the debtor had in and to such property on the day the execution was levied.

Sec. 329. Upon a sale of real property the purchaser shall be subrogated to and acquire all the right title, and interest and claim of the judgment debtor therein, and when the estate is less than a leasehold of two years' unexpired term the sale shall be absolute; in all other cases the property shall be subject to redemption as provided in this chapter. The officer shall give to the purchaser a certificate of sale, containing—

First. A particular description of the real property sold.

Second. The price bid for each distinct lot or parcel.

Third. The whole price paid.

Fourth. When subject to redemption it shall be so stated.

A duplicate of such certificate shall be filed by the officer in the office of the recorder of the county.

Sec. 330. Property sold subject to redemption, as provided in the last section, or any part separately, may be redeemed in the manner hereinafter provided, by the following persons or their successors in interest:

First. The judgment debtor or his successor in interest in the whole or in any part of the property.

Second. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

The persons mentioned in the second sub-division of this section are in this chapter termed redemptioners.

Sec. 331. The judgment debtor, or redemptioner, may redeem the property from the purchaser any time within six months after the sale, on paying the purchaser the amount of his purchase, with two per cent. a month thereon in addition up to the time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid thereon after purchase, and interest on such amount, and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien, with interest.

Sec. 332. If the property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent. thereon in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition to the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien.

The property may be again, and so often as a redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest.

Written notice of redemption must be given to the sheriff, and a duplicate filed with the recorder of the county; and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within six months after the sale, the purchaser or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner or assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of six months from the date of the sale to redeem the property. If the judgment debtor redeem he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgment of conveyances of real property. Such certificate must be filed and recorded in the office of the recorder of the county in which the property is situated, and the recorder must note the record thereof in the margin of the record of the certificate of such sale.

Sec. 333. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, as the case may be, or for him, to the officer who made the sale, or, in case his term of office has expired, then to his successor in office; and in all cases when, under the provisions of this act, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale, if he still be in office, but in case the officer who made the sale be not in such office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

Sec. 334. A redemptioner shall produce to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

First. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or of the county where the judgment is docketed; or, if he redeem upon a mortgage or other lien, a note of the record thereof certified by the recorder.

Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; and,

Third. An affidavit by himself or his agent, showing the amount then actually due on the lien.

SEC. 335. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted, with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it, in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor, or for the repair of fences, or for fuel for his family while he occupies the property.

SEC. 336. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom, in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at sheriff's sale, or his successor in interest, fail to recover possession, in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and, when so revised, the said judgment shall have the same effect as an original judgment of the said court of that date, and bearing interest as aforesaid; and any other or after acquired property, rents, issues, or profits of the said debtor shall be liable to levy and sale under execution, in satisfaction of such debt: *Provided,* That no property of such debtor, sold *bona fide* before the filing of such petition, shall be subject to lien of said judgment: *And provided, further,* That notice of the filing of such petition shall be made by filing a notice thereof in the recorder's office of the county where such property may be situated, and that said judgment shall be revived in the name of the original plaintiff or plaintiffs, for the use of said petitioner, the party in interest.

SEC. 337. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel re-payment from the principal. In such case the person so paying or contributing is entitled to the benefit of the judgment to enforce contribution or re-payment, if, within ten days after his payment, he file with the clerk of the court where judgment was rendered, notice of his payment and claim to contribution or re-payment. Upon a filing of such notice, the clerk must make an entry thereof in the margin of the docket.

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

Sec. 338. *When execution returned unsatisfied, judgment creditor entitled to an order of court requiring debtor to answer concerning his property.*
Sec. 339. *Procedure to compel debtor to answer.*
Sec. 340. *Sheriff's receipt sufficient discharge to party owing judgment debtor.*
Sec. 341. *Judge may require person or officer of corporation to appear and answer as to indebtedness to judgment debtor.*
Sec. 342. *Witnesses required to testify in same manner as on trial of an issue.*
Sec. 343. *Judge may order property applied on execution.*
Sec. 344. *Procedure where another party claims the property of judgment debtor.*
Sec. 345. *Punishment for disobedience of order.*

Sec. 338. When an execution against property of the judgment debtor, or any of the several debtors in the same judgment, issued to the sheriff of the county where he resides, or, if he does not reside in this Territory, to the sheriff of the county where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the judge of the court, or probate judge, requiring such judgment debtor to appear and answer concerning his property, before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a judge or referee, out of the county in which he resides, when proceedings are taken under the provisions of this chapter.

Sec. 339. After issuing an execution against property, and upon proof by affidavit by a party or otherwise, to the satisfaction of the court, or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place, before such judge or referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor, and bring him before such judge. Upon being brought before the judge he may be ordered to enter into an undertaking, with surety, that he will attend from time to time before the judge or referee, as shall be directed, during the pendency of the proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

Sec. 340. After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt is a sufficient discharge for the amount so paid.

Sec. 341. After the issuing or return of an execution against property of a judgment debtor, or any one of several debtors in the same judgment, and upon proof, by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution, and any interference therewith.

Sec. 342. Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon trial of an issue.

Sec. 343. The judge or referee may order any property of the judgment debtor not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except, that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Sec. 344. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation, for the recovery of such interest or debt. And the court or judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or by the court in which the action is brought, at any time, upon such terms as may be just.

Sec. 345. If any person, party or witness disobey an order of the referee properly made, in the proceeding before him, under this chapter, he may be punished by the court or judge ordering the reference, for a contempt.

TITLE X.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.

ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

Sec. 346. *One action to foreclose mortgage, power of court, who made parties.*
Sec. 347. *Court to dispose of surplus moneys.*
Sec. 348. *How property sold when debt falls due in installments.*

SEC. 346. There shall be but one action for the recovery of any debt, or the enforcement of any rights, secured by mortgage upon real estate or personal property, which action shall be in accordance with the provisions of this chapter. In action for the foreclosure of mortgages, the court shall have the power, by its judgment, to direct a sale of the incumbered property (or as much as may be necessary), and the application of the proceeds of the sale to the payment of the costs of the court, and expenses of the sale, and the amount due to the plaintiff; and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment shall be docketed for such balance against the defendant, or defendants, personally liable for the debt, and shall then become a lien on the real estate of such judgment debtor, as in other cases in which execution may be issued. No person holding a conveyance from or under the mortgagor, or of the property mortgaged, or having a lien thereon, which conveyance does not appear on record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, shall be as conclusive against the party holding such unrecorded conveyance or lien, as if he had been made a party to said action, and shall, in all respects, have the same force and effect.

SEC. 347. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

SEC. 348. If the debt for which the mortgage, lien or incumbrance is held be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property can not be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

CHAPTER II.

ACTIONS FOR NUISANCE, WASTE AND WILLFUL TRESPASS IN CERTAIN CASES.

Sec. 349. *Nuisance defined; who may bring action; nuisance may be enjoined.*
Sec. 350. *Waste defined; action for.*
Sec. 351. *Cutting or carrying away timber.*
Sec. 352. *Measure of damages under last section.*
Sec. 353. *Damages in forcible entry and detainer.*

SEC. 349. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Sec. 350. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for triple damages.

Sec. 351. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the common or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

Sec. 352. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of the public highway or bridge upon the land or adjoining it.

Sec. 353. If a person recover damages for a forcible or unlawful entry in or upon, or detention of, any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER III.

ACTIONS CONCERNING REAL ESTATE.

Sec. 354. *Who may bring action to determine an interest in real estate.*
Sec. 355. *Plaintiff shall not recover costs if defendant disclaims.*
Sec. 356. *Judgment when plaintiff's title terminates during suit.*
Sec. 357. *When value of improvements allowed as set off; order to allow survey of real estate.*
Sec. 358. *Order for survey.*
Sec. 359. *Mortgagee cannot recover possession of real estate, without foreclosure and sale.*
Sec. 360. *Injury to real estate may be enjoined during foreclosure.*
Sec. 361. *Purchaser may recover damages for injury.*
Sec. 362. *Plaintiff cannot be prejudiced by alienation of defendant.*
Sec. 363. *Customs and usages of miners.*

Sec. 354. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate, or interest.

Sec. 355. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

Sec. 356. In an action for the recovery of real property where the plaintiff shows the right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

SEC. 357. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under cover of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, or a county judge, may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts, or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

SEC. 358. The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and may make such survey and measurement; but if any unnecessary injury be done to the property he shall be liable therefor.

SEC. 359. A mortgage of real property shall not be deemed a conveyance, whatever its term, so as to enable the owner of the mortgage to recover possession of the real property without foreclosure and sale.

SEC. 360. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution, before a conveyance.

SEC. 361. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after a sale and before possession is delivered under the conveyance.

SEC. 362. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

SEC. 363. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this Territory, must govern the decision of the action.

CHAPTER IV.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

Sec. 364. *Who may bring action for partition.*
Sec. 365. *What must be set forth in the complaint.*
Sec. 366. *No person made a party unless claim appear of record.*
Sec. 367. *Notice of lis pendens.*

Sec. 368. *To whom summons directed.*
Sec. 369. *Absent and unknown parties served by publication.*
Sec. 370. *Contents of the answer of defendant.*
Sec. 371. *Rights of parties determined and Court to be satisfied as to title before judgment.*
Sec. 372. *When Court may cause partition to be made only between original co-tenants.*
Sec. 373. *Upon ascertaining that persons not parties to the action have liens or claims of record, the Court to direct an amendment, supplemental complaint or appoint a referee.*
Sec. 374. *Notice for lien-holders to appear.*
Sec. 375. *Court may order sale or partition.*
Sec. 376. *Duties of referees in making partition.*
Sec. 377. *Report of referees.*
Sec. 378. *Action upon report of referees; on whom final judgment binding; copy may be recorded.*
Sec. 379. *Tenant for years less than ten not affected.*
Sec. 380. *Expenses apportioned.*
Sec. 381. *Lien on undivided interest.*
Sec. 382. *Estate for life or years set off.*
Sec. 383. *How proceeds of sale of incumbered property applied.*
Sec. 384. *Procedure when a lien-holder has other securities.*
Sec. 385. *Disposition of proceeds of sale.*
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Sec. 387. *Notice and sales under this chapter.*
Sec. 388. *Court to direct terms of credit in order of sale.*
Sec. 389. *In whose names referees to take security.*
Sec. 390. *Tenant for life or years may receive money for his interest.*
Sec. 391. *Court may fix value without consent.*
Sec. 392. *Rights of person unknown to be protected by Court.*
Sec. 393. *Contingent interests and vested rights to be settled.*
Sec. 394. *Terms of sale made known; distinct parcels sold separately.*
Sec. 395. *Referees and guardians not to purchase; when sales void.*
Sec. 396. *Report of referees after sale.*

SEC. 364. When several co-tenants hold and are in possession of real property as parceners, joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 365. The interest of all such persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

SEC. 366. No person having a conveyance of, or claiming a lien on, the property, or some part of it, need be made a party to the action, unless such conveyance or lien appear of record.

SEC. 367. Immediately after filing the complaint in the district court, the plaintiff shall file with the recorder of the county, or of the several counties, in which the property is situated, either a copy of such complaint or a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

SEC. 368. The summons shall be directed to all the joint tenants and tenants in common, and all persons having an interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof; and, generally, to all persons unknown who have or claim any interest in the property.

SEC. 369. If a party having a share or interest is unknown, or any one of the known parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published, shall be accompanied by a brief description of the property which is the subject of the action.

SEC. 370. The defendants who have been personally served with the summons and a copy of the complaint, or who shall have appeared without such service, shall set forth in their answers, fully and particularly, the origin, nature and extent of their respective interests in the property; and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they shall correctly state the original amount and date of the same, and the true sum remaining due thereon; also, whether the same has been secured in any other way or not, and if secured, the nature and extent of such security, or they shall be deemed to have waived their right to such lien.

SEC. 371. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made, and where service of the complaint has been made by publication, like proof shall be required of the right of absent or unknown parties before such judgment is rendered, except that where there are several unknown persons having an interest in the property their rights may be considered together in the action, and not as between themselves.

SEC. 372. Whenever, from any cause, it shall become, in the opinion of the court, impracticable or highly inconvenient to make a complete partition in the first instance, among all the parties in interest, it shall be lawful for the court to first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon to adjudge and cause a partition to be made, as if such original co-tenants were the parties and sole parties in interest, and the only parties to the action, and therefore proceed in like manner to adjudge and make partition separately of each share of partition so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or allow them to remain tenants in common thereof, as they may desire.

Sec. 373. If it shall appear to the court by the certificate of the county recorder, or county clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or incumbrances of record upon such real property, or any part or portion thereof, which issued and were of record at the time of commencement of said action, and the persons holding such liens are not made parties to the action, the court shall either order such persons to be made parties to the action by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by the said persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Sec. 374. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely, thereon. In case such person be absent or his residence be unknown, service may be made by publication, or notice to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

Sec. 375. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proof being made, it shall order a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interests are remaining unknown, or are not ascertained.

Sec. 376. In making the partition, the referees shall divide the property and allot the several portions thereof to the respective parties, quantity and quality relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants, to aid them.

Sec. 377. The referee shall make a report of their proceedings, specifying therein the manner of executing their trusts, describing the property divided and the shares allotted to each party, with a particular description of each share.

Sec. 378. If no exceptions be filed to the report, or upon hearing they should be overruled, the court shall confirm the same; or it may, upon exceptions, change, modify, or set it aside, and refer the matter to the same, or, if necessary, may appoint new referees. Upon the report, as confirmed, a final judgment shall be rendered, to the effect that such partition be effectual and valid forever, which judgment shall be binding and conclusive:

First. On all persons named in the complaint as parties to the action, or who shall have appeared therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the termination of a particular estate therein, and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life.

Second. On all persons interested in the property, who may be unknown, to whom notice shall have been given of the action by publication.

Third. On all persons claiming from such parties or persons, or either of them, and to that end the action shall be deemed, and is hereby declared, to be a proceeding *in rem.*

A copy of the report of the referee, as confirmed, together with a copy of the final judgment therein rendered, duly certified, may be filed in the office of the county recorder of the county or counties in which the land is situated, whose duty it shall be to record the same, which filing and recording shall have the same force and effect as the filing and recording of a deed of conveyance.

Fourth. On all persons who have, or claim to have, conveyances to, or liens upon, or any interest in, the property, when such conveyances, liens or interest did not appear of record at the time of the commencement of the proceedings for partition.

SEC. 379. But such judgment and partition shall not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

SEC. 380. The expenses of the referees, including those of a surveyor and his assistant or assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court, in its discretion, to the referees, shall be apportioned among the different parties to the action equitably.

SEC. 381. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition in preference to such lien.

SEC. 382. When a part of the property only is ordered to be sold, if there be an estate for life or for years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

SEC. 383. The proceeds of the sale of the incumbered property shall be applied, under the direction of the court, as follows:

First. To pay its just proportion of the general costs of the action.

Second. To pay the costs of the reference.

Third. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.

Fourth. The residue among the owners of the property sold, according to the respective shares therein.

Sec. 384. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Sec. 385. The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs; but in case no direction be given, all such proceeds and securities shall be paid into court or deposited therein, or as directed by the court.

Sec. 386. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court; and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings as in an original action.

Sec. 387. All sales of real property made by referees under this chapter shall be made by public auction to the highest bidder, upon notice in the manner required for the sale of real property on execution. The notice shall state the terms of sale; and if the property, or any part of it, is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Sec. 388. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the Territory.

Sec. 389. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant in the name of the guardian of such infant; and for other shares in the name of the clerk of the county and his successors in office.

Sec. 390. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent the clerk shall enter the same in the minutes of the court.

Sec. 391. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party or deposited in the court for him, as the case may require.

Sec. 392. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Sec. 393. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of the sale to be invested, secured or paid over, in such manner as to protect the rights and interests of parties.

Sec. 394. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately.

Sec. 395. Neither of the referees, nor any person for the benefit of either them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property, being the subject of the actions, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Sec. 396. After completing the sale of the property, or any part thereof, ordered to be sold, the referee shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and condition of the sale, and the securities, if any, taken. The report shall be filed in the office of the clerk of the county where the property is situated.

CHAPTER V.

ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

Sec. 397. *Remedies by civil action instead of by writs of "scire facias" and "quo warranto."*
Sec. 398. *Who may bring action for usurping office or franchise.*
Sec. 399. *What complaint to set forth; when defendant arrested.*
Sec. 400. *What judgment may determine.*
Sec. 401. *To what person is entitled when judgment is rendered upon his right.*
Sec. 402. *Damages may be recovered.*
Sec. 403. *Rights of several persons may be settled in one action.*
Sec. 404. *Judgment against person found guilty.*

Sec. 397. The writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto*, are abolished. The remedies obtainable in these forms may hereafter be obtained by civil actions under the provisions of this chapter.

SEC. 398. An action may be brought by the district attorney in the name of the people of this Territory, upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within his district in the Territory; and it shall be the duty of the district attorney to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the Governor; and in case such district attorney shall neglect or refuse to bring such action upon the complaint of a private party, such action may be brought by such private party upon his own relation, in the name of the people of the Territory.

SEC. 399. Whenever such action is brought, the district attorney or relator, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his rights thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the Supreme Court, or a district judge, for the arrest of such defendant and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

SEC. 400. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

SEC. 401. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office.

SEC. 402. If judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

SEC. 403. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons in order to try their respective rights to such office or franchise.

SEC. 404. When a defendant against whom such action has been brought is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine, not exceeding five thousand dollars, which fine, when collected, shall be paid into the treasury of the Territory.

TITLE XI.

OF APPEALS IN CIVIL ACTIONS.

CHAPTER I.

APPEALS IN GENERAL.

Sec. 405. *Judgment or order may be reviewed.*
Sec. 406. *Order without notice may be modified without notice.*
Sec. 407. *Party may appeal. Names of parties.*
Sec. 408. *Cases in which appeals may be taken.*
Sec. 409. *How an appeal is taken.*
Sec. 410. *Undertaking an appeal.*
Sec. 411. *Undertaking to stay execution.*
Sec. 412. *When judgment directs assignment or delivery of documents or chattels, how execution stayed.*
Sec. 413. *When judgment directs the execution of a conveyance, etc., how stayed.*
Sec. 414. *How stayed when judgment is for sale of real property, etc.*
Sec. 415. *Effect of appeal when perfected; when in force on an attachment.*
Sec. 416. *Undertaking may be in one or several instruments.*
Sec. 417. *Justification of sureties and exception to their sufficiency; deposit equivalent to undertaking.*
Sec. 418. *In other cases proceedings stayed; exceptions.*
Sec. 419. *Statement on appeal and amendments thereto; how settled.*
Sec. 420. *When statement or right to amend deemed waived or amendments agreed to.*
Sec. 421. *For good cause time may be enlarged.*
Sec. 422. *How statement authenticated.*
Sec. 423. *Copy of statement annexed to transcript.*
Sec. 424. *Provisions of last five sections not applicable to appeals from an order on affidavit filed.*
Sec. 425. *What transcript to contain; when appeal dismissed.*
Sec. 426. *Effect of dismissal of an appeal.*
Sec. 427. *What court may review on appeal from a judgment.*
Sec. 428. *Powers of appellate court to reverse, affirm, or modify, and effect of same.*
Sec. 429. *Hearing of appeal; points and authorities.*
Sec. 430. *Remittitur and duties of clerk of lower court.*

Sec. 405. A judgment or order in a civil action, except when expressly made final by this act, may be reviewed as prescribed by this act.

Sec. 406. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Sec. 407. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent.

Sec. 408. An appeal may be taken:

First. From a final judgment in an action or special proceeding commenced in the court in which the same is rendered, within one year after the entry of judgment. But an exception to the decision or verdict on the ground that it is not supported by the evidence, can not be reviewed on an appeal from the judgment unless the appeal is taken within sixty days after the rendition of the judgment.

Second. From a judgment rendered on an appeal from an inferior court, within ninety days after the entry of such judgment.

Third. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order granting or refusing to grant a change of the place of trial; from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property, within sixty days after the order or interlocutory judgment is made and entered in the minutes of the court or filed with the clerk.

Sec. 409. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party, or his attorney. The order of service is immaterial, but the appeal is ineffectual for any purpose unless, within five days after service of the notice of appeal, an undertaking be filed, or a deposit of money be made with the clerk, as hereinafter provided, or the undertaking be waived by the adverse party in writing.

Sec. 410. The undertaking on appeal must be in writing, and must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars, or that sum must be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal.

Sec. 411. If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant, by two or more sureties, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal.

Sec. 412. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court, or the judge thereof, may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

SEC. 413. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court.

SEC. 414. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same can not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon, and if the judgment be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency.

SEC. 415. Whenever an appeal is perfected as provided in the preceding sections of this chapter, it stays all further proceedings in the court below upon the judgment or order appealed from, or upon the matters embraced therein, and releases from levy property which has been levied upon under execution issued upon such judgment; but the court below may proceed upon any other matter embraced in the action, and not affected by the order appealed from; and the court below may, in its discretion, dispense with or limit the security required by this chapter, when the appellant is an executor, administrator, trustee, or other person acting in another's right. An appeal does not continue in force on an attachment unless an undertaking be executed and filed on the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him, that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained, and unless within five days after the entry of the order appealed from such appeal be perfected.

SEC. 416. The undertaking prescribed by sections 411, 412, 413 and 414, may be in one instrument or several, at the option of the appellant.

SEC. 417. An undertaking upon appeal shall be of no effect unless it be accompanied by the affidavits of the sureties that they are each worth the amount specified therein, over and above all their just debts and liabilities, exclusive of property exempt from execution, except where the judgment exceeds three thousand dollars, and the undertaking is executed by more than two sureties, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. The adverse party, however, may except to the sufficiency of the sureties to the undertaking or undertakings mentioned in sections 411, 412, 413 and 414, at any time within thirty days after the filing of such undertaking; and unless they, or other sureties, within twenty days after the appellant, or appellants, shall have been served with notice of such exception, justify before a judge of the court below, a probate judge, or county clerk, upon five days' notice to the appellant, execution of the judgment or decree appealed from shall be no longer stayed; and in all cases where an undertaking is required on appeal, by the provisions of this act, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

SEC. 418. In cases not provided for in sections 410, 411, 412 and 413, the perfecting of an appeal by giving the undertaking, or making the deposit, mentioned in section 410, stays proceedings in the court below upon the judgment or order appealed from, except where it directs the sale of perishable property, in which case the court below may order the property to be sold, and the proceeds thereof to be deposited, to abide the judgment of the appellate court; and except, also, where it adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this territory; and except, also, where the order grants, or refuses to grant, a change of the place of trial of an action.

SEC. 419. When the party who has a right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall state specifically the particular errors or grounds upon which he intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified, and file the same with the clerk of the court, and give notice to the opposite party, or his attorney, of such filing. The respondent may, within five days thereafter, prepare amendments to such statement, and file the same, and serve notice thereof on the opposite party. The statement and amendments which may be filed shall be presented to the judge, or court, upon notice of two days to the opposite party, and a true statement shall thereupon be settled by the judge, or court. If no amendments are filed, the statement may be presented to the judge, or court, without any notice to the respondent.

SEC. 420. If the party shall omit to make a statement within the time above limited, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the statement as prepared, and the latter to have agreed to the amendments as proposed; but the judge who heard the cause shall, notwithstanding such omission, or implied agreement, have power to correct any misstatement of facts, or of his rulings, which such statement may contain.

SEC. 421. The several periods of time above limited may be enlarged, upon good cause shown, by the judge before whom the cause was tried.

SEC. 422. The statement, when settled by the judge, shall be signed by him, with his certificate that the same has been allowed, and is correct; when the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them, and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

Sec. 423. A copy of the statement shall be annexed to a copy of so much of the judgment roll as shall be included in the transcript on appeal, if the appeal be from the judgment; if the appeal be from an order, to a copy of such order.

Sec. 424. The provisions of the last five preceding sections shall not apply to appeals taken from an order made upon affidavit filed; but such affidavit shall be annexed to the order, in the place of the statement mentioned in those sections.

Sec. 425. On appeal from a final judgment, the appellant shall furnish the court with a transcript of the notice of appeal, undertaking or undertakings on appeal, the pleadings, or amended pleadings, as the case may be, which form the issues tried in the case, the judgment, and such other parts of the judgment roll, and no more, as are necessary to present or explain the points relied on, and the statement, if there be one, certified by the attorneys of the parties to the appeal, or by the clerk, to be correct. On appeal from a judgment rendered on an appeal, or from an order, the appellant shall furnish the court with a copy of the notice of appeal, undertaking or undertakings on appeal, the judgment or order appealed from, and a copy of the papers used on the hearing in the court below, such copies to be certified in like manner to be correct. If any written opinions be placed on file, in rendering the judgment or making the order in the court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers, the appeal may be dismissed.

Sec. 426. The dismissal of an appeal is in effect an affirmation of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

Sec. 427. Upon an appeal from a judgment, the court may review the verdict or decision, and any intermediate order or decision, excepted to, which involves the merits or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

Sec. 428. Upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on the appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

Sec. 429. Appeals in the supreme court may be brought to a hearing by either party, upon notice of three days to the opposite party. Before the argument, each party shall furnish to the other, and each of the justices, a copy of his points and authorities; or either party may file one copy thereof with the clerk, who shall cause the requisite copies to be made.

SEC. 430. When judgment is rendered upon appeal, it shall be certified by the clerk of the supreme court to the clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed shall attach the certificate to the judgment roll, and enter a minute of the judgment of the supreme court on the docket against the original entry. In cases of an appeal from an order, the clerk shall enter at length in the records of the court the certificate received, and minute against the entry of the order appealed from reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, as the case may be, by the supreme court on appeal.

CHAPTER II.

APPEALS TO THE SUPREME COURT FROM THE DISTRICT COURTS.

Sec. 431. *An appeal may be taken to the supreme court.*
First. From a final judgment.
Second. From an order granting or refusing a new trial, &c.

SEC. 431. An appeal may be taken to the supreme court from the district courts in the following cases:

First. From a final judgment, or any part thereof, entered in an action or special proceeding commenced in those courts, or brought into those courts from other courts.

Second. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial; from any special order made after final judgment; and from such interlocutory judgment in actions for partitions as determines the rights and interests of the respective parties, and directs partition to be made.

CHAPTER III.

APPEALS FROM PROBATE TO DISTRICT COURTS.

Sec. 432. *Cases in which appeals taken from probate to district courts.*
Sec. 433. *Time in which appeal taken.*
Sec. 434. *Appeal brought to a hearing without delay.*
Sec. 435. *Other cases of appeal; names of parties to appeal.*
Sec. 436. *When appeal under last section to be perfected.*
Sec. 437. *Notice of appeal.*
Sec. 438. *Undertaking on appeal.*
Sec. 439. *Undertaking for costs.*
Sec. 440. *Justification of sureties under last two sections.*
Sec. 441. *Transcript on appeal.*
Sec. 442. *Stay of proceedings in court below.*
Sec. 443. *When appellant not to recover costs.*
Sec. 444. *Case on appeal tried "de novo."*
Sec. 445. *Sheriff to execute process.*

SEC. 432. An appeal may be taken from a probate court to the district court of the district in which the probate court is held, in the following cases:

First. From an order or decree admitting a will to probate or refusing the same.

Second. From an order setting apart property or making an allowance for the widow or children.

Third. From an order granting letters testamentary or of administration, or appointing a guardian of an infant or of an insane person, or of a person incompetent to manage his property, or refusing to grant such letters or to make such appointment, or making such letters of appointment.

Fourth. From an order directing the sale or conveyance of real property.

Fifth. From an order or decree by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or by which such allowance or direction is refused.

Sixth. From an order made on the settlement of an executor, administrator, or guardian.

SEC. 433. The appeal shall be taken within thirty days after the order or decree appealed from is entered with the clerk.

SEC. 434. Appeals from the probate court shall be brought to a hearing at the earliest period practicable. For the failure to prosecute an appeal or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed.

SEC. 435. In cases other than those provided for in section 432, any party feeling aggrieved by the judgment of the probate court in any civil action may appeal therefrom to the district court for the county in which said probate court is held, or to which it may be attached for judicial purposes. The party appealing shall be known as the appellant, and the adverse party as the respondent.

SEC. 436. All appeals taken by virtue of the provisions of the last section shall be perfected within thirty days from the rendition of the judgment appealed from, and shall be tried *de novo*, in said district court.

SEC. 437. The appeal shall be taken by filing with the clerk of the court in which the judgment appealed from is entered, or with the judge of said court, if there be no clerk, a notice stating the appeal from the same, and serving a copy of such notice upon the adverse party or his attorney.

SEC. 438. The party appealing shall file with the judge or clerk of said court within five days from the filing of the notice of appeal, as provided in the last section, an undertaking in double the amount of the judgment appealed from, or if the judgment be for the recovery of specific personal property, in double the value of such property, with at least two sufficient sureties, and conditioned that the party appealing will pay any judgment that may be rendered against him in the district court, as well as all costs that may be awarded against him, and for the prosecution of such appeal with effect.

SEC. 439. If the party appealing be the party in whose favor judgment was rendered, he shall likewise execute and file an undertaking as aforesaid, in a sum equal to double the amount of the costs in the case, conditioned to pay all costs that may be adjudged against him, and for the prosecution of such appeal with effect.

SEC. 440. The undertaking provided for in the two preceding sections shall be accompanied by the affidavit of the sureties that they are residents of the county, and householders or freeholders thereof, and each worth the amount specified in the undertaking, over and above their debts, liabilities, and property by law exempt from execution, but several sureties may state that they are worth less than the amount mentioned in the undertaking, beside such exemptions, if the whole amount equals the amount of two sufficient sureties.

SEC. 441. Within ten days after filing the notice of appeal and undertaking provided for in the preceding sections, and payment of fees therefor, the said judge or clerk of said court shall make a full and complete transcript from the docket of all proceedings had in said action, and transmit the same, together with the complaint, answer, motions, pleadings, and all other papers pertaining to or belonging to said cause, to the clerk of said district court.

SEC. 442. If an execution shall have been issued upon a judgment appealed from, the judge or clerk of said court, upon receiving the notice and undertaking, as hereinbefore provided, shall issue an order directing the officer having such execution in his possession, or charged with the execution of the same, to stay all proceedings thereunder. Such officer, upon the payment of his fees for services rendered on such execution, shall thereupon relinquish all property levied upon by him, and deliver the same, together with all money collected from sales or otherwise, to the judgment debtor.

SEC. 443. If the party appealing to the district court, as provided in this act, shall fail to reduce or enlarge the judgment appealed from, ten dollars or more, or revise the same in said district court, he shall not recover any of the costs of appeal.

SEC. 444. That all appeals taken by virtue of this act shall be tried in the district court upon the papers in the cause, as if the same had originally been instituted in said court, unless said court, upon such terms as may be just, allow other papers to be filed therein, and both appellant and respondent shall have the benefit of objection taken in said probate court.

SEC. 445. That the sheriffs of the different counties of this territory are charged with the execution of process issued from said probate court, in like manner as provided for in cases in the district court, for which services they shall receive fees as provided by law.

TITLE XII.

CHAPTER I.

PROCEEDINGS AGAINST JOINT DEBTORS.

Sec. 446. *Defendants not served may be summoned to show cause after judgment.*
Sec. 447. *Summons under last section.*
Sec. 448. *Affidavit of plaintiff in such case.*
Sec. 449. *Answer of defendant; what may contain.*
Sec. 450. *Pleadings in such case.*
Sec. 451. *Trial of the issues and verdict.*

Sec. 446. When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in section 75, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

Sec. 447. The summons, as provided in the last section, shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and returnable within the same time, as the original summons. It shall not be necessary to file a new complaint.

Sec. 448. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

Sec. 449. Upon such summons, the defendant may answer within the time specified therein, denying the judgment or setting up any defence which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

Sec. 450. If the defendant in his answer deny the judgment or set up any defence which may have arisen subsequently, the summons, with the affidavit annexed, and the answer shall constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

Sec. 451. The issues formed may be tried as in other cases, but when the defendant denies in his answer any liability on the obligations upon which the judgment is rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.

CONFESSION OF JUDGMENT WITHOUT ACTION.

Sec. 452. *When and where judgment by confession may be entered.*
Sec. 453. *Statement to authorize entry of judgment.*
Sec. 454. *Statement filed and entry of judgment.*

Sec. 452. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts.

Sec. 453. A statement in writing shall be made and signed by the defendant, and verified by his oath, to the following effect:

First. It shall authorize the entry of judgment for a specified sum.

Second. If it be for money due or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due or to become due.

Third. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

SEC. 454. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with costs. The statement and affidavit with the judgment endorsed shall thereupon become the judgment roll.

CHAPTER III.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

Sec. 455. *Agreed case, how submitted and judgment in.*
Sec. 456. *Entry of judgment.*
Sec. 457. *Enforcement of and appeal from such judgment.*

SEC. 455. Parties to a question in difference which might be the subject of a civil action, may without action agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which should have jurisdiction if an action had been brought; but it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action were depending.

SEC. 456. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

SEC. 457. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER IV.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR PART OF AN ACTION.

Sec. 458. *Offer of compromise; how accepted and effect of.*

SEC. 458. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect herein specified. If the plaintiff accept the offer and give notice thereof within five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

CHAPTER V.

OF ARBITRATIONS.

Sec. 459. *Submission of controversy to arbitration.*
Sec. 460. *To be in writing.*
Sec. 461. *May be made an order of court; effect of.*
Sec. 462. *Powers of arbitrators.*
Sec. 463. *Meetings and oath of arbitrators.*
Sec. 464. *Award to be in writing; entry of judgment.*
Sec. 465. *Grounds on which award may be vacated.*
Sec. 466. *Grounds upon which award modified or corrected.*
Sec. 467. *Decision subject to appeal, but judgment not.*
Sec. 468. *Recovery when decision revoked.*

SEC. 459. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

SEC. 460. The submission to arbitration shall be in writing, and may be to one or more persons.

SEC. 461. It may be stipulated in the submission that it be entered as an order of the probate court or of the district court, for which purpose it shall be filed with the clerk of the court. The clerk shall thereupon enter into his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before award is made.

SEC. 462. Arbitrators shall have power to appoint a time and place for hearing; to adjourn from time to time; to administer oaths to witnesses; to hear allegations and evidence of the parties, and to make award thereon.

SEC. 463. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matter in controversy, and to make a just award according to their understanding.

SEC. 464. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

SEC. 465. The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, at its direction:

First. That it was procured by corruption or fraud.

Second. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing or refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced.

Third. That the arbitrators exceeded their powers in making their award; or that they refused or improperly omitted to consider a part of the matter submitted to them; or that the award is indefinite, or cannot be performed.

SEC. 466. The court may, on motion, modify or correct the award where it appears:

First. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein.

Second. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matters submitted.

Third. When the award, though imperfect in form, could have been amended if it had been a verdict or the imperfection disregarded.

SEC. 467. The decision upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before motion is made shall not be subject to appeal.

SEC. 468. If a submission to arbitration be revoked and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER VI.

ORDERS AND MOTIONS.

Sec. 469. *Orders and motions defined.*
Sec. 470. *Motions where made; notice of.*
Sec. 471. *Time in which written notice given.*
Sec. 472. *Hearing of may be transferred to another judge.*
Sec. 473. *Order to pay money enforced as an execution.*

SEC. 469. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

SEC. 470. Motions shall be made in the county in which the action is brought, or in any adjoining county in the same district: *Provided, however,* That in case of the absence of the judge of the district from his district, such motion may be made before the judge of any adjoining district. Written notice of a motion, as provided in this act, shall only be required in case of a motion made out of term time. Notice of a motion made in term time, except those made during the progress of a trial, shall be entered in a book to be kept for that purpose, and called the "motion book;" and such motions shall be for hearing after twenty-four hours from the time such notice is entered in the motion book.

Sec. 471. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district with both parties, five days before the time appointed for the hearing, otherwise ten days; but the court or judge may prescribe a shorter time.

Sec. 472. When a notice of motion is given, or an order to show cause is made returnable before a judge out of court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge before whom it might originally have been brought.

Sec. 473. Whenever an order for the payment of a sum of money is made by a court, pursuant to the provisions of this code, it may be enforced by execution in the same manner as if it were a judgment.

CHAPTER VII.

NOTICES, AND FILING AND SERVICE OF PAPERS.

Sec. 474. *To be in writing and served on party or attorney.*
Sec. 475. *Manner of service.*
Sec. 476. *Service by mail.*
Sec. 477. *How served by mail; when deemed complete.*
Sec. 478. *Appearance of defendant; entitled to notice.*
Sec. 479. *Service made on clerk for non-resident.*
Sec. 480. *What the provisions of this chapter inapplicable to.*

Sec. 474. Notice must be in writing, and notices and other papers may be served upon the party or attorney in the manner prescribed in this chapter, when not otherwise provided by this code.

Sec. 475. The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

First. If upon an attorney, it may be made during his absence from his office by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the post office, directed to such attorney.

Second. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the post office, directed to such party.

Sec. 476. Service by mail may be made when the person making the service and the person on whom it is to be made reside in different places, between which there is a regular communication by mail.

Sec. 477. In case of service by mail the notice or other paper shall be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and the place of address: *Provided,* That service in any case shall be deemed complete at the end of forty days from the date of its deposit in the post office.

Sec. 478. A defendant shall be deemed to appear in action when he answers, demurs, or gives the plaintiff a written notice of his appearance, or when an attorney gives notice of an appearance for him. After appearance, a defendant, or his attorney, shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But when a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail.

Sec. 479. When a plaintiff or a defendant who has appeared resides out of the Territory and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where the party has an attorney in the action or proceeding, the service of papers when required shall be upon the attorney instead of the party, except of subpœnas, writs, and other process, issued in the suit, and of papers to bring him into contempt.

Sec. 480. The foregoing provisions of this chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

CHAPTER VIII.

OF COSTS.

Sec. 481. Compensation of attorneys; costs.
Sec. 482. When costs allowed plaintiff of course.
Sec. 483. Costs allowed only in one action when defendant's might have been joined.
Sec. 484. Costs allowed of course in an action under Section 482 and in special proceedings.
Sec. 485. In other actions may be allowed or not; no costs where recovery less then $50.
Sec. 486. Where there are several defendants, costs allowed successful ones.
Sec. 487. In what cases in discretion of court.
Sec. 488. Fees of referees.
Sec. 489. Costs on appeal from probate and justice's court.
Sec. 490. On postponement of trial.
Sec. 491. When tender is made and deposited.
Sec. 492. Costs when administrator or trustee is a party.
Sec. 493. When case is reviewed by higher court.
Sec. 494. Memorandum of costs and disbursements.
Sec. 495. Need not include certain fees.
Sec. 496. Penalty for including illegal items in memorandum.
Sec. 497. Motion to re-tax costs.

Sec. 498. *No costs allowed witnesses unless affidavit made.*
Sec. 499. *Costs after remittitur is filed.*
Sec. 500. *Interest and costs to be included in the judgment.*
Sec. 501. *Security for costs may be required of non-residents.*
Sec. 502. *When action dismissed for want of security.*
Sec. 503. *Action in forma pauperis.*
Sec. 504. *Certain officers may prosecute or defend without security.*
Sec. 505. *Fees to be paid on demand.*

Sec. 481. The measure and mode of compensation of attorneys and counselors shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in any action in the supreme court, district courts, and probate courts, his costs and necessary disbursements in the action or special proceeding in the nature of an action.

Sec. 482. Costs may be allowed, of course, to the plaintiff upon a judgment in his favor, in the following cases:

First. In an action for the recovery of real property.

Second. In an action to recover the possession of personal property when the value of the property amounts to fifty dollars or over. Such value shall be determined by the jury, court, or referee by whom the action is tried.

Third. In an action for the recovery of money or damages when plaintiff recovers fifty dollars and over.

Fourth. In special proceedings in the nature of an action.

Sec. 483. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were, at the commencement of the previous action, openly within the Territory; but the disbursements of the plaintiff shall be allowed to him in each action.

Sec. 484. Costs shall be allowed of course to the defendant, upon a judgment in his favor in the actions mentioned in section 482 of this act, and in a special proceeding in the nature of an action.

Sec. 485. In other actions than those mentioned in section 482 of this act, costs may be allowed or not; and, if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action for the recovery of money or damages when the plaintiff recovers less than fifty dollars; nor in an action to recover the possession of personal property when the value of the property is less than fifty dollars.

Sec. 486. When there are several defendants in the actions mentioned in section 482 of this act, not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.

Sec. 487. In the following cases the costs of an appeal shall be in the discretion of the court:

First. When a new trial is ordered.

Second. When a judgment is modified.

SEC. 488. The fees of referees shall be eight dollars to each for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

SEC. 489. In all cases of appeal from the judgment of probate court or justice of the peace, when the judgment of such probate court or justice of the peace shall be wholly affirmed or reversed, the party succeeding shall recover from the opposite party his costs, not only in the district court, but before the probate court or justice of the peace, and shall have his execution therefor. When the judgment of the court below shall be affirmed in part, then the court shall divide the costs between the parties according to the justice of the case.

SEC. 490. When an application is made to a court or referee to postpone a trial, the payment of the costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

SEC. 491. When, on an action for the recovery of money only, the defendant in his answer alleges that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

SEC. 492. In an action prosecuted or defended by an executor, administrator, or trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in action by and against a person prosecuting or defending his own right; but such costs shall by the judgment be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for the mismanagement or bad faith in the action for defence.

SEC. 493. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in other way than by appeal, the same costs shall be allowed as in causes on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

SEC. 494. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the clerk of the court, within two days after the verdict or decision of the court, a memorandum of the items of his costs and necessary disbursements in the action or proceeding; which memorandum shall be verified by the oath of the party, or his attorney, stating that the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding.

SEC. 495. But such memorandum need not include the legal fees or costs of any officer of the court, or any witness' fees when an affidavit of such witness' attendance is required by law to be made.

SEC. 496. If any party shall include in such memorandum any item to which he is not entitled, or if any clerk, sheriff, referee, or other officer shall include such item in the taxed costs, and a motion to retax the same shall be made by the party against whom the same is taxed, and if such motion to retax shall prevail, there shall be taxed, as a part of the cost of such motion, a docket fee of $25, and judgment therefor, with the other costs allowed by law, shall be entered against the party, sheriff, referee, clerk, or other officer who so unlawfully taxed the same, and the same may be off-set against any costs or judgment in favor of the party or officer so improperly taxing such cost, and against the party making such motion; or if no such judgment exists, the court may direct that the party making such motion have execution therefor.

SEC. 497. A party dissatisfied with the costs claimed may, within ten days after notice of filing of the bill of costs, file a motion to have the same taxed by the court in which the judgment was rendered, or by the judge thereof, at chambers.

SEC. 498. *Provided, however,* That no allowance or charge shall be made for the attendance of witnesses, unless the witness shall make affidavit before the clerk of the number of days he or she actually attended, and of the distance he or she shall have traveled, and that such attendance was at the instance of one or both parties, or his, her, or their attorney.

SEC. 499. Whenever costs are awarded to a party by an appellate court, if he claims such costs he must, within thirty days after the remittitur is filed with the clerk below, deliver to such clerk a memorandum of his costs, verified as prescribed by the preceding section, and thereafter he may have an execution therefor, as upon a judgment.

SEC. 500. The clerk shall include in the judgment entered up by him any interest on the verdict or decision of the court, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained, and he shall, within two days after the same shall be taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose, and shall make a similar insertion of the costs in the copies and docket of the judgment.

SEC. 501. When a plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new additional undertaking be executed and filed.

SEC. 502. After the lapse of thirty days from the service of notice that security is required, or of an order that new or additional security is required, upon proof thereof, and that no undertaking is required, has been filed, the court or judge may order the action to be dismissed.

SEC. 503. That any person may commence and prosecute an action in any of the courts of this Territory who will file an affidavit, stating that he has a good cause of action, that he is unable to pay the costs in money, or procure security to secure the same; then it is hereby made the duty of the officers of the courts to issue all writs, and serve the same, without demanding or receiving their fees in advance.

SEC. 504. Whenever it shall be necessary for any Territorial district, or county officer to commence, prosecute, or defend any suit by attachment, or otherwise, on behalf and in the name of the Territory of Montana, under the provisions of any statute of this Territory, such officer shall so commence, prosecute, or defend any such suit without giving bond; nor shall any such officer, when prosecuting any suit on behalf of the Territory, or any county thereof, be required to pay or deposit any fee or amount before or during the prosecution of any such suit; nor shall any officer so prosecuting or defending be taxed with costs or damage, but such cost or damage, when such officer shall fail to sustain his suit, shall be taxed to the said county or Territory, as the case may be.

SEC. 505. Each party to a civil action shall be required to pay the fees fixed by law for the performance of any service or duty by any officer of such court at the instance of such party at the time such service is rendered, except in the case hereinbefore mentioned; and no such officer shall be required to perform such service or duty unless the fees fixed therefor shall, on demand, be first paid or tendered.

CHAPTER IX.

MISCELLANEOUS PROVISIONS.

Sec. 506. *Supreme and district courts may make rules.*
Sec. 507. *Judges may take acknowledgments and affidavits.*
Sec. 508. *No vacancy or failure of term to affect actions.*
Sec. 509. *Use of English language and abbreviations.*
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Sec. 514. *Non-judicial days; when business transacted thereon. Proceedings when judge not present on day of commencement of a term.*
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Sec. 525. *Copy of record to be evidence.*
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Sec. 528. *Divorce trials may be private.*
Sec. 529. *Powers of a court to enforce its authority.*
Sec. 530. *In what cases judges shall not act as such.*
Sec. 531. *Judge shall not act as attorney in his own court.*
Sec. 532. *Judge of supreme or district court shall not act as attorney in any court, except.*

Sec. 533. *Judge or justice shall not have an attorney as partner.*
Sec. 534. *Application for an order refused in one court cannot be entertained in another.*
Sec. 535. *Contempt to violate last section and order vacated.*

Sec. 506. The supreme court, and each of the district courts, shall respectively have power to make rules and regulations for governing their practice and procedure in reference to all matters not provided for by law.

Sec. 507. The judges of the supreme court, of the district courts, and of the probate courts, shall have power, in any part of the Territory, and justices of the peace within their respective counties shall have power, to take and certify:

First. The proof and acknowledgment of a conveyance of real property, or any other instrument required to be proved or acknowledged.

Second. An affidavit to be used in any court of justice in this Territory.

Sec. 508. No action or proceeding in a court of justice shall be affected by a vacancy in the office of all or any of the judges, or by a failure of a term thereof.

Sec. 509. Every written proceeding in a court of justice in this Territory, or before a judicial officer, shall be in the English language, but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals, in the customary manner.

Sec. 510. Each of the following courts, and no others, shall have a seal:

First. The supreme court.

Second. The district courts.

Third. The probate courts.

Sec. 511. The clerk of each court shall keep the seal thereof.

Sec. 512. The seal may be affixed by impressing it upon the paper, or on a substance attached to the paper and capable of receiving the impression.

Sec. 513. The courts of justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

Sec. 514. No court shall be opened, nor shall any judicial business be transacted on Sundy, New Year's day, Fourth of July, Christmas day, Washington's birthday, Thanksgiving day, or on a general election, except for the following purposes:

First. To give, upon their request, instructions to a jury then deliberating on their verdict.

Second. To receive a verdict or discharge a jury.

Third. For the exercises of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

Fourth. When it shall appear by the affidavit of the plaintiff, or some one in his behalf, in cases for the recovery of specific personal property, that the defendant is about to conceal, dispose of, or remove such property out of the jurisdiction of the court, an order for taking possession of the same may be issued on any day.

Fifth. When an application for a writ of attachment is made, and it shall appear by the affidavit of the plaintiff, or some one in his behalf, that the defendant is about to dispose of, conceal, or remove property subject to execution or attachment, out of the jurisdiction of the court, a writ of attachment may be issued on any day.

When the day fixed for the opening of a court shall fall on any of the days mentioned in this section, the court shall stand adjourned until the next succeeding day. When on the day appointed for the commencement of any term of the supreme or district court, the judges or judge of such court being not present to hold the same, the clerk of the court shall adjourn such term of court, from day to day, until the expiration of one week from the day appointed for the commencement of the term, noting such adjournment in the minutes each day; and if the judges or judge of such court be not then present to hold such term on the day one week from the time appointed for such term to commence, the clerk shall adjourn the court for the term, and make an entry on the minutes thereof. If the judges or judge shall appear on any day to which the court has been adjourned by the clerk, as above provided, the court shall proceed in the same manner and with the same effect as if the judges or judge had been present and the court had been regularly opened on the day appointed for the term to commence.

SEC. 515. Every court of justice, except a justice's court, shall sit at the county seat of the county in which it is held, except as may be otherwise provided by law. No justice of the peace shall hold a court in any other county or city than the one for which he shall have been elected.

SEC. 516. In an action brought against a sheriff for an act done by virtue of his office, if he give written notice thereof to the sureties on any bond of indemnity recieved by him, the judgment recovered therein shall be sufficient evidence of his right to recover against such sureties; and the court or judge, in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

SEC. 517. The clerk shall keep among the records of the court a register of actions; he shall enter therein a title of the action, with brief notes under it from time to time of all papers filed and proceedings had therein.

SEC. 518. When there are three referees or three arbitrators, all shall meet; but two of them may do any act which might be done by all.

SEC. 519. The time within which an act is to be done, as provided in this act, shall be computed by excluding the first day and including the last; if the last day be Sunday it shall be excluded. When the act to be done relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the service of notices other than appeal, or the preparation of statement, or of bills of exceptions, or of amendments thereto, the time allowed by this act may be extended, upon good cause shown, by the court in which the action is pending, or the judge thereof, or in the absence of such judge from the county in which the action is pending, by the probate judge; but such extension shall not exceed thirty days beyond the time prescribed by this act, without the consent of the adverse party.

SEC. 520. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

SEC. 521. When a cause of action has arisen in another State or Territory, or in a foreign country, and by the laws thereof an action thereon can not be there maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this Territory, except in favor of a citizen thereof, who has held the cause of action from the time that it accrued.

SEC. 522. Words used in this act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; and words used to include the masculine gender, shall include the feminine gender; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark, when the person can not or is unable to write, his name being written near it, and witnessed by a person who writes his own name as a witness.

SEC. 523. In all cases where an undertaking by the provisions of this act, is required, it shall be the duty of the person taking the same to require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above their just debts, liabilities, and property exempt by law from execution: *Provided,* That when the amount specified in the undertaking exceed three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

SEC. 524. Whenever property has been taken by an officer, under a writ of attachment, in pursuance of the provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, or a probate judge, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court to abide the judgment in the action. Such order shall be made only upon notice to the adverse party or his attorney, in case such party has been personally served with summons in the action.

SEC. 525. A copy of any record, or document, or paper in the custody of a public officer of this Territory, or of the United States within this Territory, certified under the official seal, or verified by the oath of such officer to be a true, full, and correct copy of the original in his custody, may be read in evidence in an action or proceeding in the courts of this Territory, in the like manner, and with the like effect, as the original could be if produced. The receipt or certificate signed by the register or receiver of any United States land office of the entry or purchase of any tract of land, or of any tract by any land warrant, is *prima facie* evidence in the courts of this Territory that the title to the land mentioned or described in said receipt or certificate, is in the person named therein, his heirs or assigns.

Patents issued by the United States to lands in this Territory, or duplicates thereof from the records in the general land office, and the register's or receiver's receipt* or certificate mentioned in this section, may be recorded in the registry of deeds of the county in which the land described in the patent is situated, and the record of such patents, or duplicates, or copies of such record, certified by the register of deeds, shall be evidence in like manner, and to the same extent as the records or transcripts thereof of other conveyances of real estate.

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*That portion of Sec. 525 referring to register or receiver's receipt and patents is taken from Act of February 5, 1876.

SEC. 526. The supreme court, the several district courts, and the several probate courts of this Territory, shall be courts of record.

SEC. 527. The sittings of every court of justice shall be public, except as provided in the next section.

SEC. 528. In an action for divorce the court may direct the trial of any issue of fact joined therein to be private, and upon such direction all persons may be excluded except the officers of the court, the parties, their witnesses, and counsel.

SEC. 529. Every court shall have power:

First. To preserve and enforce order in its immediate presence.

Second. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority.

Third. To compel obedience to its lawful judgments, orders, and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein.

Fourth. To control in furtherance of justice, the conduct of its ministerial officers.

SEC. 530. A judge shall not act as such in any of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity within the third degree; or when he has been attorney or counsel for either party in the action or proceeding.

SEC. 531. A judge shall not act as attorney or counsel in a court in which he is a judge, or in an action or proceeding removed therefrom to another court for review, or in any action or proceeding from which an appeal may lie in his own court.

SEC. 532. A judge of the supreme court, or of the district court, shall not act as attorney or counsel in any court, except in an action in which he is a party to the record.

SEC. 533. A judge or justice of the peace shall not have a partner acting as attorney or counsel in any court in this Territory.

SEC. 534. If an application for an order, made to a judge of a court in which the action or proceeding is pending, be refused, in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court: *Provided,* That nothing in this section shall be so construed as to apply to motions refused for any informalities in the papers or proceedings necessary to obtain an order.

SEC. 535. A violation of the last section may be punished as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by a judge of a court in which the action or proceeding is pending.

TITLE XIII.

CHAPTER I.

OF THE WRIT OF CERTIORARI AND MANDAMUS.

Sec. 536. *Writ of review.*
Sec. 537. *When writ may be granted.*
Sec. 538. *Application for, how made.*
Sec. 539. *Writ, how directed and return of.*
Sec. 540. *What may be required by writ.*
Sec. 541. *May contain order staying proceedings.*
Sec. 542. *How served.*
Sec. 543. *How far review upon writ may extend.*
Sec. 544. *Return of writ, hearing and judgment upon.*
Sec. 545. *Copy of judgment transmitted to inferior tribunal.*
Sec. 546. *Judgment roll and appeal from judgment.*

Sec. 536. The writ of *certiorari* may be denominated the writ of review.

Sec. 537. This writ may be granted, on application, by any court of this Territory except a justice's, probate, or mayor's court. The writ shall be granted in all cases when an inferior tribunal, board, or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

Sec. 538. The application shall be made on affidavit by the party beneficially interested; and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Sec. 539. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified; when directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

Sec. 540. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceedings (describing or refering to them with convenient certainty), that the same may be reviewed by the court; and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

Sec. 541. If a stay of proceedings be not attended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omited, in the sound discretion of the court, but if omitted, the power of the inferior court or officer shall not be suspended, nor in the proceedings stayed.

Sec. 542. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

Sec. 543. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer, has regularly pursued the authority of such tribunal, board or officer.

Sec. 544. If the return of the writ be defective the court may order a further return to be made. When a full return has been made the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment either affirming or annulling or modifying the proceedings below.

Sec. 545. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceedings certified up.

Sec. 546. A copy of the judgment signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the surpreme court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.

CHAPTER II.

THE WRIT OF MANDATE OR MANDAMUS.

Sec. 547. *Mandamus denominated mandate.*
Sec. 548. *By what authority and for what issued.*
Sec. 549. *In what cases and how issued.*
Sec. 550. *Forms of alternative and peremptory writs.*
Sec. 551. *When either writ issued and notice.*
Sec. 552. *On return of defendant may show cause.*
Sec. 553. *When question may be tried by a jury.*
Sec. 554. *Plaintiff not concluded by the answer.*
Sec. 555. *Motion for new trial.*
Sec. 556. *Clerk to transmit certified copy of verdict, etc.*
Sec. 557. *Hearing of the application.*
Sec. 558. *What judgment for applicant if he recover.*
Sec. 559. *Writ, how served.*
Sec. 560. *Power of court to punish disobedience.*

Sec. 547. The writ of *mandamus* may be denominated the writ of mandate.

Sec. 548. It may be issued by any court in this Territory, except a justice's, probate, or mayor's court, to any inferior tribunal, corporation, board, or person, to compell the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admisssion of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

Sec. 549. The writ shall be issued in all cases where there is not a plain, speedy, and edequate remedy in the ordinary course of law. It shall be issued upon affidavit on the application of the party beneficially interested.

Sec. 550. The writ shall be either alternative or peremptory; the alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted.

SEC. 551. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

SEC. 552. On the return of the alternative, or the day on which the application of writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

SEC. 553. If an answer is made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation on which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

SEC 554. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance.

SEC. 555. The motion for a new trial must be made in the court in which the issue of fact is tried.

SEC. 556. If no notice of a motion for a new trial be given, or, if given, the motion be denied, the clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

SEC. 557. If no answer be made, the case must be heard on the papers of the aplicant. If the answer raises only questions of law, or puts in issue immaterial statements not affecting the substantial rights of the parties, the court must proceed to hear, or fix a day for hearing, the argument of the case.

SEC. 558. If judgment be given for the applicant, he shall recover the damages which he shall have sustained, as found by the jury, or as may be determined by the court, or referees upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay,

SEC. 559. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of any of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

SEC. 560. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation, board, or such person upon whom the writ has been personally served, has, without just cause, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of a persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may make any orders necessary and proper for the complete enforcement of the writ.

CHAPTER III.

WRIT OF PROHIBITION.

Sec. 561. *Writ defined; its use.*
Sec. 562. *By what authority and how issued.*
Sec. 563. *Writ either alternative or peremptory, form of.*
Sec. 564. *Provisions of preceding chapter applicable to.*
Sec. 565. *Writs of review, mandate and prohibition, returnable at any time.*

SEC. 561. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person, when such proceedings are without, or in excess of, the jurisdiction of such tribunal, corporation, board, or person.

SEC. 562. It may be issued by any court except police or justice's courts, to an inferior tribunal, or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

SEC. 563. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

SEC. 564. The provisions of the preceding chapter, except of the four first sections thereof, apply to this proceeding.

SEC. 565. Writs of review, mandate, and prohibition, issued by the supreme court, or by the district court, may be made returnable and a hearing thereon be had at any time.

TITLE XIV.

OF CONTEMPTS AND THEIR PUNISHMENTS.

Sec. 566. *What shall be deemed contempts.*
Sec. 567. *When party dispossessed of real estate to be guilty of contempt.*
Sec. 568. *How punished and proceedings when contempt committed in or out of the presence of the court.*
Sec. 569. *Duty of sheriff in executing warrant.*
Sec. 570. *When prisoner released on bail.*
Sec. 571. *Return of writ.*
Sec. 572. *Hearing of the charge.*
Sec. 573. *Of judgment and fine.*
Sec. 574. *When contempt consists of an act of omission.*
Sec. 575. *Proceeding if offence indictable.*
Sec. 576. *Proceedings if party fail to appear.*
Sec. 577. *Illness an excuse for non-appearance.*
Sec. 578. *Judgment shall be fine or imprisonment, and shall be conclusive and final.*

Sec. 566. The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

First. Disorderly, contemptuous, or insolent behavior towards the judge while holding court, tending to interrupt the due course of a trial or other judicial proceeding.

Second. A breach of peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

Third. Misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service.

Fourth. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

Fifth. Disobedience of any lawful judgment, order, or process of the court.

Sixth. Assuming to be an officer, attorney, counsel of a court, and acting as such without authority.

Seventh. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

Eighth. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial.

Ninth. Any other unlawful interference with the process or proceedings of a court.

Tenth. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness.

Eleventh. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

Twelfth. Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

SEC. 567. Every person dispossessed or ejected from or out of any real property, by the judgment or process of any court of competent jurisdiction, and who, not having the right so to do, re-enters into or upon, or takes possession of, any such real property, or induces or procures any person not having the right so to do, or aids or abets him therein, is guilty of a contempt of the court by which such judgment was rendered, or from which such process issued. Upon a conviction of such contempt the court or justice of the peace must immediately issue an *alias* process, directed to the proper officer, and requiring him to restore the party entitled to the possession of such property, under the original judgment or process, to such possession.

SEC. 568. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily, for which an order shall be made reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

When the contempt is not committed in the immediate view and presence of the court or judge, a warrant or attachment may be issued to bring the person charged to answer; or, without a previous arrest, a warrant of commitment may, upon notice or upon an order to show cause, be granted, and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order to show cause.

Whenever a warrant of attachment is issued pursuant to this chapter, the court or judge shall direct, by an endorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such endorsement.

SEC. 569. Upon executing the warrant of attachment, the sheriff shall keep the person in custody, bring him before the court or judge, and detain him until an order may be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

SEC. 570. When a direction to let a person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest upon executing and delivering to the officer, at any time before return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on return of the warrant, and abide the order of the court or judge thereon, or they will pay, as may be directed, the sum specified in the warrant.

Sec. 571. The officer shall return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

Sec. 572. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Sec. 573. Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt a fine may be imposed upon him, not exceeding five hundred dollars.

Sec. 574. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it, and in that case the act shall be specified in the warrant of commitment.

Sec. 575. Persons proceeded against according to the provisions of this chapter shall also be liable to indictment for the same misconduct, if it be an indictable offence; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Sec. 576. When the warrant of arrest has been returned served, if the person arrested does not appear on return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party, by reason of the misconduct for which the warrant was issued, and the costs of the proceedings.

Sec. 577. Whenever, by the provisions of this chapter, an officer is required to keep a person, arrested on a warrant of attachment, in custody, and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend, shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person, arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Sec. 578. The judgment and order of the court or judge, made in cases of contempt, shall be final and conslusive. The punishment shall be by fine and imprisonment, but no fine shall exceed the sum of five hundred dollars.

TITLE XV.

OF EMINENT DOMAIN.

Sec. 579. *Eminent domain defined.*
Sec. 580. *For what public uses eminent domain may be exercised.*
Sec. 581. *Classification of estates and rights subject to.*
Sec. 582. *Private property which may be taken.*
Sec. 583. *What must appear before private property taken.*
Sec. 584. *Land required for public use may be surveyed; action for injuries from malice, etc.*

Sec. 585. *Where and how proceedings must be commenced.*
Sec. 586. *What the complaint must contain.*
Sec. 587. *Contents and service of summons.*
Sec. 588. *All persons interested may appear and defend.*
Sec. 589. *Power of the Court.*
Sec. 590. *Legal testimony to be heard; what ascertained and assessed.*
Sec. 591. *Measure of damages.*
Sec. 592. *Plaintiff may institute second action to perfect title.*
Sec. 593. *Plaintiff must pay assessment within thirty days after judgment, and may elect to build fences and cattle guards.*
Sec. 594. *Payment may be made to or deposited in court for defendant; execution may issue and court may annul proceedings.*
Sec. 595. *Final order of condemnation.*
Sec. 596. *Of the possession by plaintiff.*
Sec. 597. *Allowance of costs under this chapter.*

Sec. 579. Eminent domain is the right of the people or government to take private property for public use. This right may be exercised in the manner provided in this Title.

Sec. 580. Subject to the provisions of this Title eminent domain may be exercised in behalf of the following public uses:

First. Public buildings and grounds for the use of the Territory, and all other public uses authorized by the legislature of this Territory.

Second. Public buildings and grounds for the use of any county, incorporated city, or city and county, village, town, or school districts; canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, incorporated city, or city and county, village or town; or for draining any county, incorporated city, or city and county, village, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, incorporated city, or city and county, village, or town, or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes by which the same may be authorized.

Third. Wharves, docks, piers, chutes, booms, ferries, bridges, toll-roads, by-roads, plank and turnpike roads, steam and horse railroads; canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating lumber and logs on streams not navigable.

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Fourth. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also, outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of the tailings or refuse matter from their several mines.

Fifth. By-roads leading to residences and farms.

Sixth. Telegraph lines.

Seventh. Sewerage of an incorporated city, or city and county, or of any village or town, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or to any college or university.

SEC. 581. The following is a classification of the estates and rights in lands subject to be taken for public use:

First. A fee-simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of *debris* or tailings of a mine.

Second, An easement when taken for any other use.

Third. The right of entry upon, and occupation of, lands, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

SEC. 582. The private property which may be taken under this Title includes:

First. All real property belonging to any person.

Second. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

Third. Franchises for toll-roads, toll-bridges, and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads, or other more necessary use.

Fourth. All rights of way for any and all the purposes mentioned in section 580, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed or intersected by, any other right of way or improvements, or structures thereon. They shall also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections, and connections shall be made in manner most compatible with the greatest public benefit and least private injury.

Fifth. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

SEC. 583. Before property can be taken it must appear:

First. That the use to which it is to be applied is a use authorized by law.

Second. That the taking is necessary to such use.

Third. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

SEC. 584. In all cases where land is required for public use, the Territory, or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of section 589. The Territory, or its agents in charge of such public use, may enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for injuries resulting from negligence, wantonness, or malice.

SEC. 585. All proceedings under this title must be brought in the district court for the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

SEC. 586. The complaint must contain:

First. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiffs.

Second. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

Third. A statement of the right of the plaintiff.

Fourth. If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied by surveys and maps thereof.

Fifth. A description of each piece of land sought to be taken, and whether the same includes a whole or only a part of an entire parcel or tract.

Sixth. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff; but the court may consolidate or separate them, to suit the convenience of parties. When application for the condemnation of a right of way for the purpose of sewerage is made on behalf of a settlement, or of an incorporated village or town, the probate judge alone must be named as plaintiff.

SEC. 587. The clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars, it must be in the form of a summons in civil actions, and must be served in like manner.

SEC. 588. All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his property or interest, or that claimed by him, in like manner as if named in the complaint.

SEC. 589. The court shall have power:

First. To regulate and determine the place and manner of making connections and crossings; of enjoying the common use mentioned in the fifth sub-division of section 582.

Second. To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor.

Third. To determine the respective rights of different parties seeking condemnation of the same property.

SEC. 590. The court, jury, or referee, must hear such legal testimony as may be offered by any other of the parties to the proceedings, and thereupon must ascertain and assess:

First. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed.

Second. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

Third. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefitted, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed under sub-division two, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

Fourth. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

Fifth. As far as practicable, compensation must be assessed for each source of damage separately.

SEC. 591. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed as provided in section 590.

If an order be made letting the plaintiff into possession, as provided in section 596, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages.

SEC. 592. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this Title prescribed.

SEC. 593. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, at the time of or before payment, elect to build the fences and cattle guards, and if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed costs of the same, to build such fences and cattle guards within eighteen months from the time the railroad is built on the land taken, and if such bond be given, need not pay the costs of such fences and cattle guards. In an action on such bond the plaintiff may recover reasonable attorney's fees.

SEC. 594. Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution, as in civil cases, and if the money cannot be made on execution, the court, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

SEC. 595. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court must make a final order of condemnation, which must describe the property condemned and the purpose of such condemnation. A copy of the order must be filed in the office of the recorder of the county, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

Sec. 596. At any time after service of summons, the court may authorize the plaintiff, if already in possession, to continue therein; and if not, then to take possession of and use the property during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against the plaintiff on account thereof; but the plaintiff must give security, to be approved by such court or judge, to pay as well the compensation in that behalf, when ascertained, as all damages which may be sustained by the defendant, if for any cause the property shall not be finally taken for public use.

Sec. 597. Costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court.

TITLE XVI.

CHAPTER I.

GENERAL PRINCIPLES OF EVIDENCE.

Sec. 598. *When evidence of one witness sufficient.*
Sec. 599. *What witness can testify to.*
Sec. 600. *How and in whose presence a witness heard.*
Sec. 601. *How presumption of truth may be repelled.*
Sec. 602. *Rights of a party not prejudiced by declarations, etc., of another.*
Sec. 603. *Declarations, etc., of grantor of real estate evidence against grantee.*
Sec. 604. *When declaration, etc., forms part of transaction.*
Sec. 605. *When question in dispute is obligation of a third person.*
Sec. 606. *Evidence in questions of pedigree.*
Sec. 607. *Evidence against successor in interest.*
Sec. 608. *When a part of an act, declaration, etc., has been inquired into, the whole may be.*
Sec. 609. *Evidence of the contents of a writing.*
Sec. 610. *Contents of a written agreement the only evidence of its terms, except in certain cases.*
Sec. 611. *Interpretation of language of a writing.*
Sec. 612. *Office of a judge in construing a statute or instrument.*
Sec. 613. *Intention of the Legislature; particular and general provision and intent.*
Sec. 614. *Circumstances under which instrument may be shown.*
Sec. 615. *Presumption as to terms of writing.*
Sec. 616. *When writing controls printing.*
Sec. 617. *Evidence of experts.*
Sec. 618. *As to the intentions of parties to an agreement.*
Sec. 619. *A writing is to be construed according to the ordinary acceptation of its terms.*
Sec. 620. *Interpetration in favor of natural right to prevail.*
Sec. 621. *Only material allegations need be proved.*

Sec. 622. *Evidence must correspond to material allegations; what inquired of collatterally.*
Sec. 623. *Affirmative allegations must be proven; when negative may be.*
Sec. 624. *What facts may be given in evidence on trial.*
Sec. 625. *Of what facts courts take judicial notice.*

Sec. 598. The direct evidence of one witness, who is entitled to full credit, is sufficient for proof of any fact, except perjury and treason.

Sec. 599. A witness can testify of those facts only which he knows of his own knowledge—that is, which are derived from his own perceptions—except in those few express cases in which his opinions, or inferences, or the declarations of others are admissible.

Sec. 600. A witness can be heard only upon oath or affirmation, and upon a trial he can be heard only in the presence, and subject to the examination, of all the parties, if they choose to attend and examine.

Sec. 601. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence, and the jury are the exclusive judges of his credibility.

Sec. 602. The rights of a party cannot be prejudiced by the declaration, act, or omission of another, except by virtue of a particular relation between them; therefore, proceedings against one cannot affect another.

Sec. 603. Where, however, one derives title to real property from another, the declaration, act, or omission of the latter while holding the title in relation to the property, is evidence against the former.

Sec. 604. Where, also, the declaration, act or omission forms part of a transaction, which is itself the fact in dispute, or evidence of that fact, such declaration, act or omission is evidence as part of the transaction.

Sec. 605. And where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against such person, is *prima facie* evidence between the parties.

Sec. 606. The declaration, act, or omission of a member of a family, who is a decedent, or out of the jurisdiction, is also admissible as evidence of common reputation, in cases where, on questions of pedigree, such reputation is admissible.

Sec. 607. The declaration, act, or omission of a decedent, having sufficient knowledge of the subject, against his pecuniary interest, is also admissible as evidence to that extent against his successor in interest.

Sec. 608. When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood, may also be given in evidence.

SEC. 609. There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases:

First. When the original has been lost or destroyed, in which case proof of the loss or destruction must first be made.

Second. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after a reasonable notice.

Third. When the original is a record or other document in the custody of a public officer.

Fourth. When the original has been recorded and a certified copy of the record is made evidence by this code or other statute.

Fifth. When the original consists of numerous accounts or other documents which cannot be examined in court, without great loss of time, and the evidence sought from them is only the general result of the whole.

In the cases mentioned in sub-divisions three and four, a copy of the original, or of the record, must be produced; in those mentioned in sub-divisions one and two, either a copy or oral evidence of the contents.

SEC. 610. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and, therefore, there can be, between the parties and their representatives or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

First. Where a mistake or imperfection of the writing is put in issue by the pleadings.

Second. Where the validity of the agreement is the fact in dispute.

But this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, as defined in section 614; or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

SEC. 611. The language of a writing is to be interpreted according to the meaning it bears in the place of its execution, unless the parties have reference to a different place.

SEC. 612. In the construction of a statute or instrument, the office of the judge is simply to ascertain and determine what is, in terms or in substance, contained therein—not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted, as will give effect to all.

SEC. 613. In the construction of a statute, the intention of the legislature, and in the construction of the instrument, the intention of the parties is to be pursued, if possible; and when a general and a particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

SEC. 614. For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown, so that the judge be placed in the position of those whose language he is to interpret.

SEC. 615. The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is, nevertheless, admissible that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

SEC. 616. When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter.

SEC. 617. When the characters in which an instrument is written are difficult to be deciphered, or the language of the instrument is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language.

SEC. 618. When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it; and when different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made.

SEC. 619. A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or endorsers of a bill of exchange or promissory note that it has been protested for want of acceptance or payment, must be held to import that the same has been duly presented for acceptance or payment, and the same refused, and that the holder looks for payment to the person to whom the notice is given.

SEC. 620. When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right, and the other against it, the former is to be adopted.

SEC. 621. None but a material allegation need to be proved.

SEC. 622. Evidence must correspond with the substance of the material allegations, and be relevant to the question in dispute. Collateral questions must therefore be avoided. It is, however, within the discretion of the court to permit inquiry into a collateral fact when such fact is directly connected with the question in dispute, and is essential to its proper determination, or when it affects the credibility of a witness.

SEC. 623. Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation, except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defence is founded; not even in such case, when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party.

SEC. 624. In conformity with the preceding provisions, evidence may be given upon a trial of the following facts:

First. The precise fact in dispute.

Second. The act, declaration or omission of a party as evidence against such party.

Third. An act or declaration of another, in the presence and within the observation of a party, and his conduct in relation thereto.

Fourth. The act or declaration, verbal or written, of a deceased person in respect to the relationship, birth, marriage, or death of any person related by blood or marriage to such deceased person; the act or declaration of a deceased person done or made against his interest in respect to his real property; and also in criminal actions the act or declaration of a dying person, made under a sense of impending death, respecting the cause of his death.

Fifth. After proof of a partnership or agency, the act or declaration of a partner or agent of the party, within the scope of the partnership or agency, and during its existence. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

Sixth. After proof of a conspiracy, the act or declaration of a conspirator against his co-conspirator, and relating to the conspiracy.

Seventh. The act, declaration, or omission forming part of a transaction, as explained in section 604.

Eighth. The testimony of a witness deceased, or out of the jurisdiction, or unable to testify, given in a former action between the same parties, relating to the same matter.

Ninth. The opinion of the witness respecting the identity or handwriting of a person when he has knowledge of the person or handwriting; his opinion on a question of science, art, or trade, when he is skilled therein.

Tenth. The opinion of a subscribing witness to a writing, the validity of which is in dispute, respecting the mental sanity of the signer, and the opinion of an intimate acquaintance respecting the mental sanity of a person, the reason of the opinion being given.

Eleventh. Common reputation existing previous to the controversy respecting facts of a general or public interest more than thirty years old, and in cases of pedigree and boundary.

Twelfth. Usage, to explain the true character of an act, contract, or instrument, where such true character is not otherwise plain; but usage is never admissible except as an instrument of interpretation.

Thirteenth. Monuments and inscriptions in public places as evidence of common reputation; and entries in family bibles or other family books or charts, engravings on rings, family portraits, and the like, as evidence of pedigree.

Fourteenth. The contents of a writing, when oral evidence thereof is admissible.

Fifteenth. Any facts from which the facts in issue are presumed, or are logically inferable.

Sixteenth. Such facts as served to show the credibility of a witness, as explained in section 601.

SEC. 625. Courts take judicial notice of the following facts:

First. The true signification of all English words and phrases, and all legal expressions.

Second. Whatever is established by law.

Third. Public and private official acts of the legislature, executive, and judicial departments of this Territory, and of the United States.

Fourth. The seals of all the courts of this Territory, and of the United States.

Fifth. The accession to office, and the official signatures and seals of office, of the principal officers of government in the legislature, executive and judicial departments of this Territory and the United States.

Sixth. The existence, title, national flag, and seal of every State or sovereign recognized by the executive power of the United States.

Seventh. The seals of courts of admiralty and maritime jurisdiction, and of notaries public.

Eighth. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

In all the cases the court may resort, for its aid, to appropriate books or documents of reference.

CHAPTER II.

WITNESSES.

Sec. 626. *Who may be witnesses.*
Sec. 627. *When persons not allowed to testify under provisions of last section.*
Sec. 628. *Persons disqualified as witnesses.*
Sec. 629. *What persons holding confidential relations cannot testify.*
Sec. 630. *Official communications.*
Sec. 631. *Judge or juror may be called as witness.*
Sec. 632. *Interpreter; how summoned, sworn, or punished for contempt, and his compensation.*

SEC. 626. All persons, without exception otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded, nor those who have been convicted of crime, nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witnesses may be drawn in question, as provided in section 601.

SEC. 627. No person shall be allowed to testify, under provision of the last section, where the adverse party, or the party for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person, when the facts to be proved transpired before the death of such deceased person; and nothing in said section shall affect the laws in relation to attestation of any instrument required to be attested; nor shall anything contained in said section render any person, who, in a criminal proceeding, is charged with the commission of any public offence, competent or compellable to give evidence therein for or against himself.

SEC. 628. The following persons shall not be witnesses:

First. Those who are of unsound mind at the time of their production for examination.

Second. Children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Third. Persons against whom judgment has been rendered upon a conviction for a felony, unless pardoned by the governor, or such judgment has been reversed on appeal.

SEC. 629. There are particular relations in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

First. A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

Second. An attorney or counselor shall not, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

Third. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

Fourth. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action, as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

SEC. 630. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

SEC. 631. The judge, himself, or any juror, may be called as a witness by either party; but in such case it shall be in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge or jury.

SEC. 632. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any court or judge to appear before such court or judge, to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpœna. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt, and may be punished accordingly. A person summoned as an interpreter shall receive such compensation as the court in its discretion may order, in addition to the fees allowed by law.

CHAPTER III.

MEANS OF PRODUCTION.

Sec. 633. *Of the subpœna.*
Sec. 634. *How subpœna issued and what to require.*
Sec. 635. *Service of subpœna.*
Sec. 636. *Service on concealed witness.*
Sec. 637. *Person in court may be compelled to testify.*
Sec. 638. *Subpœna duces tecum.*

Sec. 639. *What questions witness must answer.*
Sec. 640. *Refusal to be sworn or answer is contempt.*
Sec. 641. *Punishment for disobeying subpœna.*
Sec. 642. *Court may issue warrant for defaulting witness.*
Sec. 643. *What shall be stated in warrant for commitment; how warrant of arrest directed and executed.*
Sec. 644. *Order for examination of a prisoner.*
Sec. 645. *Only made on affidavit.*
Sec. 646. *When witness may be produced if imprisoned.*

Sec. 633. A subpœna may require not only the attendance of the person to whom it is directed at a particular time and place, to testify as a witness, but may also require him to bring any books, documents, or other things under his control, to be used as evidence. No person shall be required to attend as a witness before any court, judge, or justice, or any other officer out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

Sec. 634. The subpœna shall be issued as follows:

First. To require attendance before the court, or at the trial of an issue therein, it shall be issued and under the seal of the court before which the attendance is required, or in which the issue is pending.

Second. To require attendance out of the court before a judge or justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it shall be issued by the judge, justice, or any other officer before whom the attendance is required.

Third. To require attendance before a commissioner appointed to take testimony by a court of a foreign country or of the United States, or of any other State in the United States of America, or any other district or county within the Territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within their respective jurisdiction, with like power to enforce attendance, and upon certificate of contumacy to said court to punish contempt of their process, as such judge or justice could exercise if the subpœna directed the attendance of the witness before their courts in a matter pending therein.

Sec. 635. The service of a subpœna shall be made by showing the original, and delivering a copy or a ticket containing its substance to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service may be made by any person.

Sec. 636. If a witness be concealed in a building or vessel so as to prevent the service of a subpœna upon him, any court or judge, or any officer issuing the subpœna, may, upon proof by affidavit, of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpœna, and the sheriff shall serve it accordingly; and for that purpose may break into the building or vessel where the witness is concealed.

Sec. 637. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

Sec. 638. It shall be the duty of a witness duly served with a subpœna to attend at the time appointed with any papers under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed.

Sec. 639. A witness shall answer questions, legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for felony; nor need he give an answer that will have a direct tendency to degrade his character, unless it be the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

Sec. 640. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit, or deposition, when required, may be punished as a contempt by the court or officer issuing the subpœna, or requiring the witness to be sworn; and, if the witness be a party, his complaint may be dismissed or his answer stricken out.

Sec. 641. A witness disobeying a subpœna shall also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend; which forfeiture and damages may be recovered in a civil action.

Sec. 642. In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness, and bring him before the court or officer where his attendance was required.

Sec. 643. Every warrant of commitment issued by a court or officer pursuant to this chapter, must specify therein particularly the cause of the commitment, and, if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest, or commit, a witness pursuant to this chapter, must be directed to the sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the district court.

Sec. 644. If the witness be a prisoner confined in a jail or prison within this Territory for any other cause than a sentence for felony, an order for his examination in the prison, upon deposition, or for his temporary removal and production before a court, or officer, for the purpose of being orally examined, may be made as follows:

First. By the court itself, in which the action or special proceeding is pending.

Second. By a judge of the supreme court, district court, or probate judge of the county where the action or proceeding is pending, if before a judge or other person out of court.

Sec. 645. Such order can only be made on affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

Sec. 646. If the witness be imprisoned in the county where the action or proceeding is pending, for a cause other than felony, his production may be required. In all other cases, his examination, when allowed, shall be taken upon deposition.

CHAPTER IV.

OF THE EXAMINATION OF PARTIES TO AN ACTION OR PROCEEDING, AND OF PERSONS FOR WHOSE IMMEDIATE BENEFIT SUCH ACTION OR PROCEEDING IS PROSECUTED OR DEFENDED.

Sec. 647. *Action to obtain discovery under oath prohibited.*
Sec. 648. *Adverse party compelled to testify.*
Sec. 649. *May be rebutted by adverse testimony.*
Sec. 650. *Remedy in case adverse party refuse to testify.*

SEC. 647. No action to obtain a discovery under oath, in aid of the prosecution or defence of another action or proceeding shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner provided by this and the foregoing chapter.

SEC. 648. A party to an action or proceeding may be examined as a witness at the instance of the adverse party, or of any one of several adverse parties; and for that purpose may be compelled in the same manner, and subject to the same rules of examinatien, as any other witness, to testify at the trial, and he may be examined on a commission.

SEC. 649. The examination of a party thus taken may be rebutted by adverse testimony.

SEC. 650. If an adverse party refuse to attend or testify at the trial, or give his deposition before trial, or upon a commission when required, his complaint or answer may be stricken out, and judgment be taken against him; and he may be also, in the discretion of the court, proceeded against as in other cases for contempt.

CHAPTER V.

ON AFFIDAVIT.

Sec. 651. *Before whom taken in this Territory.*
Sec. 652. *Before whom taken out of the Territory.*
Sec. 653. *Before whom taken in foreign country.*
Sec. 654. *When taken in another State or foreign country, how tested.*
Sec. 655. *Where filed; to be prima facie evidence.*

SEC. 651. An affidavit, to be used before any court, judge, or officer of this Territory, may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this Territory.

SEC. 652. An affidavit taken in another Territory, or any State of the United States, to be used in this Territory, shall be taken before a commissioner appointed by the governor of this Territory to take affidavits and depositions in such other Territory or State, or before any notary public or judge of a court of record having a seal.

SEC. 653. An affidavit taken in a foreign country, to be used in this Territory, shall be taken before an ambassador, minister, or consul of the United States, or before any judge of a court of record, having a seal, in such foreign country.

Sec. 654. When an affidavit is taken before a judge of a court in another State, or in a foreign conntry, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court under the seal thereof.

Sec. 655. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or the clerk thereof. If not so made, it may be filed with the clerk of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the judge of the court or clerk having it in custody, is *prima facie* evidence of the fact stated therein.

CHAPTER VI.

OF DEPOSITIONS TAKEN IN THIS TERRITORY.

Sec. 656. *In what cases depositions may be taken.*
Sec. 657. *Notice to take depositions.*
Sec. 658. *Manner of taking and returning depositions.*
Sec. 659. *May be read in any stage of proceedings by either party.*

Sec. 656. The testimony of a witness in this Territory may be taken by deposition in an action at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding after a question of fact has arisen therein, in the following cases:

First. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended.

Second. When the witness resides out of the county in which his testimony is to be used.

Third. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required.

Fourth. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

Sec. 657. Either party may have the deposition taken of a witness in this Territory, before any judge or clerk, or any justice of the peace, or notary public, in this Territory, on serving on the adverse party previous notice of the time and place of examination, together with a copy of an affidavit showing that the case is one mentioned in the last section. At any time during the forty days immediately after the service of summons by publication has been completed, and at any time thereafter, when the defendant has not appeared, the notice required by this section may be served on the clerk of the court where the action is pending; such notice shall be at least five days, and in addition one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless, for a cause shown, a judge by order prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

SEC. 658. Either party may attend such examination, and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness, and corrected by him in any particular if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, enclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk, or such person, or transmitted through the mail, or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof, by affidavit, or oral testimony, shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may also be read in case of the death of the witness.

SEC. 659. When a deposition has once been taking it may be read in any stage of the same action or proceeding by either party, and shall then be deemed evidence of the party reading it.

CHAPTER VII.

OF DEPOSITIONS TAKEN OUT OF THIS TERRITORY.

Sec. 660. *When deposition may be taken.*
Sec. 661. *How deposition of non-resident witness taken.*
Sec. 662. *May be read in evidence.*
Sec. 663. *May be read by either party.*

SEC. 660. The testimony of a witness out of the Territory may be taken by deposition in an action, at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding at any time after a question of fact has arisen therein.

SEC. 661. When the testimony of any non-resident witness or witnesses shall be necessary in any civil cause, depending in any court of law or equity in this Territory, it shall be lawful for the party wishing to use the same, on giving to the adverse party, or his attorney, five days previous notice, together with a copy of the interrogatories intended to be put to such witness or witnesses, to sue out from the proper clerk's office a commission, under the seal of the court, to be directed to any person as commissioner, or to any judge or justice of the peace, clerk of a court of record, or notary public of the county or city in which such witness or witnesses may reside, authorizing and requiring him to cause such witness or witnesses to come before him, at such place and time as he may designate and appoint, and faithfully to take his, her, or their deposition, or depositions upon all such interrogations as may be enclosed with, or attached to, such communication, both on the part of the plaintiff and the defendant, and none others; and to certify the same when taken together with the said commission and interrogations, into the court in which such cause may be depending, with the least possible delay. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States, in such country; or to any person agreed upon by the parties.

SEC. 662. Every examination and deposition which shall be taken and returned according to the provisions of this act, may be read in evidence in the cause in which it shall be taken, with the like effect as if such witness had been present, and examined by parol in open court, on the trial or hearing thereof.

SEC. 663. All depositions taken in pursuance hereof, when returned into court may be read by either party, on the trial of the cases to which they relate.

CHAPTER VIII.

PROCEEDINGS TO PERPETUATE TESTIMONY.

Sec. 664. *Testimony may be perpetuated.*
Sec. 665. *What petition of applicant, verified by oath, must state.*
Sec. 666. *Authority of person appointed to take the testimony.*
Sec. 667. *How taken and returned.*
Sec. 668. *Petition, order and papers filed prima facie evidence.*
Sec. 669. *When may be used on trial.*
Sec. 670. *Effect of deposition.*

SEC. 664. The testimony of a witness may be taken and perpetuated, as provided in this chapter.

SEC. 565. The applicant must produce to a district or a probate judge, a petition, verified by the oath of the applicant, stating:

First. That the applicant expects to be a party to an action in a court in this Territory, and in such case the names of the persons whom he expects will be adverse parties; or,

Second. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and,

Third. The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved.

The judge to whom such petition is presented must make an order allowing the examination, and designating the officer before whom the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known, and reside in this Territory, must be personally served; and, if unknown, such notice must be served on the clerk of the county where the property to be affected by the evidence is situated, or the judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the judge, for the same period required for the publication of summons. The judge must also designate in his order the clerk of the county to whom the depositions must be returned when taken.

SEC. 666. The person appointed by the judge to take the depositions is authorized, if a resident of this Territory, on receiving a copy of the order of the judge, and of the notice prescribed in the last section, with proof of its personal service or publication, or if a resident without the Territory, on receiving the commission mentioned in the next section, with proof of like service of publication of the notice, to take the deposition of the witness named in the order of the judge or in the commission; or, if more than one witness is thus named, of such of them as appear before him at the time designated; and the taking of the same may be continued from time to time.

SEC. 667. The examination must be by question and answer, and if the testimony is to be taken outside of this Territory, it must be taken upon a commission to be issued by the judge allowing the examination, under the seal of the court of which he is a judge, and upon interrogatories to be settled by the judge granting such commission, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper, for such time as the judge may designate. The deposition, when completed, must be carefully read to and subscribed by the witness, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the clerk of the county designated in the order of the judge allowing the examination who shall file the same when received. The judge allowing the examination shall file with the clerk the order for the examination, the petition on which the same was granted, with proof of service of the order and notice.

SEC. 668. The petition and order and papers filed by the judge, as provided in section 665, or a certified copy thereof, are *prima facie* evidence of the facts stated therein to show compliance with the provisions of this chapter.

SEC. 669. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which depositions prove, or tend to prove, upon proof of the death or insanity of the witnesses, or that they can not be found, or are unable, by reason of age or other infirmity, to give their testimony, the depositions or copies thereof may be used by either party, subject to all legal objections; but if the parties attended at the examination, no objection to the form of an interrogatory can be made at the trial unless the same was stated at the examination.

SEC. 670. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness, or to the relevancy of any question put to him, or of any answer given by him, may be made in the same manner as if he were examined orally at the trial.

CHAPTER IX.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

Sec. 671. *Who may administer oaths.*
Sec. 672. *How persons other than Christians to be sworn.*
Sec. 673. *Form of affirmation.*
Sec. 674. *Repealing clause.*
Sec. 675. *When act to take effect.*

SEC. 671. Every court of this Territory, every judge or clerk or deputy clerk of any court, every justice of the peace, and every notary public, county clerk, and every officer authorized to take testimony, or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations.

SEC. 672. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

SEC. 673. A witness who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration by assenting, when addressed in the following form:

"You do solemnly affirm that the evidence you shall give in this issue (or matter) pending between ——— and ——— shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by answer, "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

SEC. 674. That Chapters XLI and LXXX of an act entitled "An act revising, re-enacting, and codifying the general and permanent laws of Montana Territory," approved January 12th, 1872, relating to limitations, and the first six hundred and fifteen sections of an act entitled "An act to regulate proceedings in civil cases in courts of justice of the Territory of Montana," approved January 12th, 1872, be, and the same is hereby, repealed: *Provided*, That this act shall not be so construed as to affect any suit or proceeding that may be pending in any court of this Territory at the time this act shall take effect.

SEC. 675. This act shall take effect and be in force on and after the first day of August, one thousand eight hundred and seventy-seven; except Chapter II of Title XV, and III of Title VIII, and Section 84 of Chapter II of Title VI, and Section 241 of Chapter III of Title VIII, which shall take effect and be in force from and after its passage.

NOTE.—The foregoing 675 sections, except where otherwise specially noted, are taken from the Act of February 16th, 1877.

NOTE.—In the original act an error was made in *numbering* the *Titles*, there being two Titles VIII. This has been corrected by numbering the second VIII, Title IX, and renumbering the following Titles to correspond.

TITLE XVII.

CHAPTER I.

COURTS OF JUSTICE IN THIS TERRITORY.

Sec. 676. *What courts constitute courts of justice.*
Sec. 677. *Supreme court jurisdiction.*
Sec. 678. *Territory—how divided.*

Sec. 679. *District judge for each district jurisdiction.*
Sec. 680. *Original jurisdiction.*
Sec. 681. *Appellate jurisdiction.*
Sec. 682. *Courts and judges have power to issue all writs.*
Sec. 683. *Terms to be held as provided by law; county to furnish rooms, etc.*
Sec. 684. *District judge to transact business at chambers.*
Sec. 685. *Transfer of action from district court to probate court.*
Sec. 686. *Probate court in each county.*
Sec. 687. *Probate court—power of.*
Sec. 688. *Probate court—jurisdiction of.*
Sec. 689. *Probate court—when to be open.*
Sec. 690. *Provisions of act applicable in all probate courts.*
Sec. 691. *If judge disqualified, case transferred to district court.*
Sec. 692. *Probate court—judge to be conservator of peace.*
Sec. 693. *Judge of probate courts have same power as district courts to grant orders and writs.*
Sec. 694. *Jurors—how many necessary.*
Sec. 695. *Clerks to issue venire.*

Sec. 676. The following shall be the courts of justice of this Territory:

First. The supreme court.
Second. The district courts.
Third. The probate courts.
Fourth. The justices' courts.

SUPREME COURT.

Sec. 677. The supreme court shall have appellate jurisdiction in all civil cases where the amount in dispute exceeds one hundred dollars, and in all criminal cases tried in the district courts, and shall hold its sessions at the capital at the times fixed by law.

DISTRICT COURT.

Sec. 678. The Territory shall be divided into three judicial districts.

Sec. 679. There shall be a district judge for each of the judicial districts. The courts held by them shall be district courts of the Territory. The jurisdiction of these courts shall be of two kinds:

First. Original.
Second. Appellate.

Sec. 680. The district court shall have original jurisdiction in civil cases where the amount in dispute, or value of the property sued for, exceeds fifty dollars, and in all criminal cases not otherwise provided for: *Provided*, The district court may enter judgment for a less sum than fifty dollars upon the plaintiff paying costs, and may in like manner enter judgment for the recovery of personal property of less than fifty dollars value.

Sec. 681. The appellate jurisdiction of these courts shall extend to hearing upon appeal an order or judgment of a probate court or justice of the peace in the cases provided by law.

Sec. 682. The courts and judges thereof shall have power to issue all writs necessary and proper to the complete exercise of the power conferred on them by the constitution, organic act, and laws of this Territory.

SEC. 683. The terms shall be held at such times and places as provided by law. If a room for holding the court be not provided by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to provide such room, attendants, fuel, lights, and stationery, and the expense shall be a county charge.

SEC. 684. The district judges shall, at all reasonable times, when not engaged in holding courts, transact such business at their chambers as may be done out of court. At chambers they may hear and dispose of all applications for orders and writs which are usually granted in the first instance upon an *ex parte* application, and may, in their discretion, also hear applications to discharge such orders and writs.

SEC. 685. When an action or proceeding is commenced in a district court in which a probate court has concurrent jurisdiction, the district court may, if the parties agree, by order, transfer the same to the probate court of the same county. Upon such transfer, the probate court shall have and exercise, over such action or proceeding, the same jurisdiction as if originally commenced therein.

PROBATE COURT.

SEC. 686. There shall be in each county a probate court with the jurisdiction conferred by this chapter.

SEC. 687. The probate court shall have power to open and receive the proof of last wills and testaments, and to admit them to probate, to grant letters testamentary of administration, and of guardianship, and to revoke the same for cause shown, according to law, to compel executors and administrators and guardians to render an account when required, or at the period by law to order the sale of property of estates, or belonging to minors, to order the payment of debts due by estates, to order and regulate the partitions of property or estates of deceased persons, to compel the attendance of witnesses, to appoint appraisers or arbitrators, to compel the production of title deeds, papers, or other property of an estate or of a minor, and to make such other orders as may be necessary and proper, in the exercise of the jurisdiction conferred on the probate court.

SEC. 688. The probate courts shall have jurisdiction within their respective counties, in all civil actions to recover money or damages, wherein the damages or debt claimed does not exceed five hundred dollars: *Provided*, That they shall not have jurisdiction in any matter in controversy, when the title or right to the peaceable possession of land may be in dispute, or in chancery, or in divorce cases.

SEC. 689. That there shall be regular terms of the probate court held in the several counties of the Territory, on the first Mondays of January, March, July, September, and November of each year, for the transaction of probate business.

The probate courts shall be always open for the transaction of all other business within their jurisdiction.

NOTE.—Act February 13th, 1874.

SEC. 690. The provisions of this code, so far as applicable, shall govern the proceedings and practice in the probate courts of the Territory in civil actions; but no judgment rendered in the probate court shall be a lien upon any real estate, nor shall any real estate be sold on execution issued out of the probate court. Any person recovering a judgment in the probate court may file a certified transcript of such judgment with the clerk of the district court of the county wherein such judgment is recovered; and said clerk shall docket such judgment in the same manner as judgments rendered in said district court. And said judgment, from the time of such docketing, shall be a lien upon the real estate of the defendant, as provided by law; and execution may be issued thereon by the clerk of the said district court, and real estate sold in the same manner as on other executions issued on judgments in said district court: *Provided,* That writs of attachments issued out of the probate court may be levied on real estate in the same manner as writs issued out of the district court; but no such real estate levied on by attachment shall be sold on execution until the judgment is docketed in the district court above provided.

NOTE.—Act February 2d, 1876.

SEC. 691. If the judge be disqualified, for any cause, from sitting on the determination of any cause or proceeding pending before him, the cause shall be certified, with the original papers, to the district court of the district including the county, which shall proceed thereon to final judgment and determination.

SEC. 692. That each judge of the probate courts shall be a conservator of the peace throughout his county.

SEC. 693. In all civil cases within their jurisdiction the probate courts and the judges thereof shall have the same power to grant all orders and writs and process which the district courts, or the judges thereof, have power to grant within their jurisdiction, and to hear and determine all questions arising within their jurisdiction as fully and completely as the district courts or the judges thereof have power to do under the laws of this Territory.

SEC. 694. Juries in all civil actions in the probate court shall consist of not more than twelve nor less than six persons having the qualifications of electors, who shall not be summoned until the cause is at issue and set for trial, and a demand is made by one or more of the parties, and their fees for one day paid into the hands of the clerk by the party making the demand.

SEC. 695. The clerk shall issue a *venire,* returnable on the day upon which the cause is set for trial, and if, on the return day, the panel be not full, it may be filled by summoning others.

CHAPTER II.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

Sec. 696. *Forcible entry and detainer; what constitutes.*
Sec. 697. *Any justice of the peace authority to inquire into.*
Sec. 698. *Justice to issue summons when complaint made.*
Sec. 699. *Summons; upon whom served.*
Sec. 700. *Justice to hear complaint after return of summons.*
Sec. 701. *Trial; when postponed.*

Sec. 702. *Testimony to be taken in same manner as in other cases.*
Sec. 703. *Trial.*
Sec. 704. *If defendant found guilty, punishment and costs.*
Sec. 705. *If jury can not agree.*
Sec. 706. *Damages; how assessed.*
Sec. 707. *If rent of land not paid, defendant to quit possession.*
Sec. 708. *Preceding section; whom not to apply to.*
Sec. 709. *Juror or witness not appearing to be fined.*
Sec. 710. *Appeals.*
Sec. 711. *Appeals to be tried in district court.*
Sec. 712. *Amendments to complaint.*
Sec. 713. *Rules and regulations to apply as in other cases.*

SEC. 696. No person or persons shall hereafter make any entry into lands, tenements or other possessions, or by entering upon any gulch mining claim, or quartz lode mining claim, or other mining claim, in the temporary absence of the party or parties in possession, or by entering peaceably, and the turning out by force, or frightening by threats, or other circumstances of terror, the party or parties out of possession, and detain and hold the same. In every such case, the person so offending shall be deemed guilty of a forcible entry and detainer within the meaning of this act; but not in cases where entry is given by law, and in such cases not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do the contrary, and thereof be duly convicted, he shall be punished by fine.

SEC. 697. Any justice of the peace shall have authority to inquire as hereinafter directed, as well as against those who make unlawful or forcible entry into lands, tenements or other possessions, and detain the same as against those who, having lawful and peaceable entry into lands, tenements, or other possessions, unlawfully detain the same, and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, or that the said lands, tenements, or other possessions, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

SEC. 698. When any complaint shall be made in writing to any justice of the peace, of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before said justice on a day named in the summons, which shall not be more than ten days from the issuing of such summons, and at the place therein mentioned.

SEC. 699. Such summons shall be served upon the person or persons against whom the same is issued, as other summons are served, issued by a justice, at least four days before the return day thereof, and the officer serving the same shall make return of the time and manner of such service.

SEC. 700. After the return of the summons served as hereinbefore provided, and at the time and place appointed in said summons, the justice shall proceed to hear and determine said complaint, unless either party demand a jury, in which case a jury shall be summoned in the same manner and on the same terms, and the trial shall be had as in other cases of trial by jury before a justice.

SEC. 701. If, at the time set for trial, the defendant, his agent, or attorney, shall make oath that he cannot safely proceed to trial for want of some material witness, naming him, that he has made due exertion to obtain such witness or his testimony, and believes if an adjournment be allowed he will be able to procure the testimony of such witness, in which case, if such person or persons will give bond, with sufficient surety, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding one month.

SEC. 702. The testimony of any witness which may be considered necessary by either party, may be taken in the same manner and with like effect as is provided for the taking of testimony in other cases in justices' courts.

SEC. 703. On the trial the complainant shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in actual possession at the time of the forcible entry, or was entitled to the possession of the premises at the time of the unlawful holding over. The defendant may show in his defence that he or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before the said inquisition, and that his interest therein is not yet ended or determined; and such showing shall be a bar to the prosecution; and in no case where the title to land is involved shall a justice of the peace have cognizance.

SEC. 704. If, upon the trial, upon any complaint under this act, the justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations of the complaint, said justice shall enter judgment for the complainant to have restoration of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may issue execution therefor; and the said justice shall award and issue a writ of restitution. But if the said justice or jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant, and issue execution therefor.

SEC. 705. If the jury impaneled can not agree upon a verdict, the justice may, with the consent of the parties, discharge them, and issue a *venire*, returnable forthwith, or at some other time agreed upon by the parties.

SEC. 706. In all cases of a verdict by the justice or jury for the complainant, the damages shall be assessed as well for the waste and injury committed upon the premises as for the rents and profits during such detainer; and the verdict shall also find the monthly rents and profits of the said premises, and the complainant shall be entitled to recover treble damages against the person against whom the judgment has been rendered, which damages shall be assessed by the justice or jury, and when so assessed shall be trebled by said justice and entered as a judgement in the cause upon which execution may issue.

SEC. 707. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let to them, or to the person under whom they hold possession, or contrary to the covenants or conditions of the lease or agreement under which they hold, or after any rent shall become due according to the terms of the lease or agreement, and shall remain unpaid for the space of three days, in all such cases if the lessor, his heirs, executors, administrators, assigns, agent, or attorney, shall make demand in writing of such tenant that they shall deliver possession of the premises held as aforesaid, and if such tenant shall refuse or neglect for the space of three days after such demand to quit the possession of such lands or tenements, or to pay the rent thereof due and unpaid, as aforesaid, upon complaint thereof to any justice of the peace of the proper county, the justice shall proceed to hear, try and determine the same in the same manner as in other cases hereinbefore provided for, but shall impose no fine in any such case mentioned in this section.

Sec. 708. The preceding section shall not extend to any person who has or who shall have continued in possession one year after the termination of the time for which the premises were demised or leased or let to them or those under whom they hold possession, or to any person who continues in possession three years quietly and peaceably.

Sec. 709. Every person summoned as a juror, or subpœnaed as a witness, who shall not appear, or who appearing shall refuse to serve or give evidence in any prosecution instituted under this act, shall forfeit and pay for every such default or refusal to the use of the county, unless some reasonable cause be assigned, such fine, not exceeding twenty dollars, as the said justice shall think proper to impose, and execution may be issued therefor.

Sec. 710. Appeals may be taken from all judgments rendered under this act to the district court, under the same rules and restrictions as to notice, appeal bond, and other matters, as are required on appeals from justices' courts in other cases; but in case such appeal be taken by the defendant, the undertaking shall contain an additional condition, to the effect that he will pay to the plaintiff all rents, profits and other damages that may accrue during the pendency of the appeal. If the appeal should be decided against him beyond the filing of the appeal bond, all proceedings shall be stayed.

Sec. 711. Such appeals shall be tried in the district court as other appeals from justices' courts are tried.

Sec. 712. Amendments to the complaint, answer, or other proceedings, in matters of form only, may be allowed by the justice, or the district court, on appeal at any time before judgment, upon such terms as may be just, and all matters of excuse, justification, or evidences of allegations in the complaint, may be given in evidence under the answer.

Sec. 713. All rules and regulations relating to trial before justices of the peace in other cases, and not inconsistent with the provisions of this title, shall be applicable, and be observed in trials arising under this title.

TITLE XVIII.

CHAPTER I.

PROCEEDINGS IN JUSTICES' COURTS IN CIVIL CASES.

Sec. 714. *Courts, denominated justices' courts; jurisdiction.*
Sec. 715. *Jurisdiction; in what cases.*
Sec. 716. *Jurisdiction; extension of.*
Sec. 717. *Party may prosecute in person or by attorney. Any person may act as attorney, except constable.*
Sec. 718. *Judgment; upon confession.*
Sec. 719. *Voluntary appearance of party without summons.*

Sec. 714. The courts held by justices of the peace in this Territory shall be denominated justices' courts, and shall have the jurisdiction conferred by this act; but nothing contained in this act shall affect their jurisdiction in actions or proceedings now pending therein, nor shall it affect any judgment or order already made, or proceedings already taken.

Sec. 715. Justices' courts shall have jurisdiction of the following cases:

First. In all civil actions where the amount claimed does not exceed the sum of one hundred dollars.

Second. Of actions to recover the possession of personal property when the value of such property does not exceed one hundred dollars.

Third. Of an action for a forcible or an unlawful entry upon, or a forcible or unlawful detainer of lands, tenements, or other possessions. The jurisdiction conferred by this section shall not extend, however, to a civil action in which the title to real property shall come in question.

Sec. 716. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater unless expressly provided by statute.

Sec. 717. Parties in justices' courts may prosecute or defend in person or by attorney; and any person on the request of a party may act as attorney, except that the constable by whom the summons or jury process was served shall not appear or act on the trial on behalf of either party.

Sec. 718. Judgment upon confession may be entered up in justices' court in this Territory specified in the confession.

Sec. 719. Justices' courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to the residences or the place where the cause of action arose, or the subject matter of the action may exist.

CHAPTER II.

Sec. 720. *Actions; how commenced.*
Sec. 721. *Guardian; how appointed.*
Sec. 722. *Summons; how addressed.*
Sec. 723. *Appearance of defendant; time of service.*

Sec. 724. *Summons; by whom served, and on whom.*
Sec. 725. *Party residing out of Territory; how served.*
Sec. 726. *Order for arrest; when made.*
Sec. 727. *Affidavit for arrest; before order of arrest made.*
Sec. 728. *When defendant arrested; where taken.*
Sec. 729. *What required of officer making arrest.*
Sec. 730. *Defendant to be kept in custody until ordered discharged.*
Sec. 731. *Defendant may demand immediate trial.*
Sec. 732. *Defendant may demand adjournment.*
Sec. 733. *Defendant may put facts in issue, by plea under oath.*
Sec. 734. *Writ to attach property of defendant issued by justice.*
Sec. 735. *Written undertaking required before writ issued.*
Sec. 736. *Writ; to whom directed.*
Sec. 737. *Writ of attachment in district court applicable to justices' courts; provisions of.*
Sec. 738. *Plaintiff may claim delivery of property.*
Sec. 739. *What plaintiff is required to do before delivery.*
Sec. 740. *Justice shall issue order; when.*
Sec. 741. *Officer shall take property upon receipt of order.*
Sec. 742. *Defendant may require return of property within two days.*
Sec. 743. *If property not delivered, building or enclosures to be broken open.*
Sec. 744. *Property to be kept in secure place.*
Sec. 745. *If property claimed by third party.*
Sec. 746. *Order and affidavit; when returned.*
Sec. 747. *Qualification of sureties.*

Sec. 720. Action in justices' courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, with a statement of the amount due therein, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleading of the parties without summons; in the latter case the action shall be deemed commenced at the time of appearance.

Sec. 721. When a guardian is necessary, he shall be appointed by the justice, as follows:

First. If the infant be plaintiff, the appointment shall be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed and to be responsible for costs if he fail in the action, shall be first filed with the justice.

Second. If the infant be defendant, the guardian shall be appointed at the time the summons is returned or before pleading. It shall be the right of the infant to nominate his own guardian, if the infant be over fourteen years of age and the proposed guardian be present and consent in writing to be appointed, otherwise the justice may appoint any suitable person who gives such consent.

Sec. 722. The summons shall be addressed to the defendant by name, or, if his name be unknown, by a fictitious name, and shall summon him to appear before the justice at his office, naming its township or city, and at the time specified therein, to answer the complaint of the plaintiff for a cause of action therein described, in general terms sufficient to apprise the defendant of the nature of the claim against him, and in an action for money or damages shall state the amount the plaintiff will take judgment for if the defendant fails to answer, and shall be subscribed by the justice and dated on the day of its issue.

SEC. 723. The time mentioned in the summons for the appearance of the defendant, and the time of service, shall be as follows:

First. When the summons is accompanied with an order for the arrest of the defendant it shall be returnable immediately.

Second. In all other cases it shall be returnable in not less than four or more than ten days from its date, and shall be served at least four days before the time for appearance.

SEC. 724. The summons shall be served by the sheriff, or a constable of the county, or by some one specially appointed by the justice, as follows:

First. If the action be against a corporation, by reading the same to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof, or when no such officer resides in the county, to a director resident therein, or by leaving a copy of the summons at the principal office or place of business of such corporation in the county.

Second. If against a minor under the age of fourteen years, by reading the same to his father, mother, or guardian, or if there be none within the county, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is, or by leaving a copy thereof at the dwelling house or place of abode of such person.

Third. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by reading the same to such guardian, or by leaving a copy thereof at his place of residence.

Fourth. In all other cases, by reading the same to the defendant personally, or by leaving a copy at his place of residence.

SEC. 725. When the person on whom the service is to be made resides out of the Territory, or can not, after due diligence, be found within the Territory, or conceals himself to avoid the service of summons, and the fact shall appear by affidavit to the satisfaction of the justice, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, the justice shall grant an order that service be made by publication of the summons. The order shall direct the publication to be made in a newspaper printed in the county in which the action is brought, if there is one, and, if not, in the newspaper printed nearest thereto, at least once a week: *Provided,* That a publication against a defendant residing out of the Territory, or absent therefrom, shall not be less than four weeks. The service of summons shall be deemed complete at the expiration of the time prescribed by the order of publication, and the defendant shall have ten days after the completion of the service to answer.

SEC. 726. An order for the arrest of the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons, and brought before the justice, and there detained until duly discharged, in the following cases:

First. In an action for the recovery of money or damages, and a cause of action arising on contract, express or implied, where the defendant is about to depart from the Territory with the intent to defraud his creditors.

Second. In an action for the embezzlement of property or fraudulently misapplied or converted to his own use, by an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity.

Third. When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought.

Fourth. When the defendant has removed, concealed, or disposed of the property, or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action.

SEC. 727. Before any order for arrest shall be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, or if the order of arrest be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

SEC. 728. The defendant, immediately on being arrested, shall be taken to the office of the justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him by the affidavit of the defendant that he is a material witness for the defendant, the officer shall immediately take the defendant before the next nearest justice within the county, who shall take cognizance of the action, and proceed thereon as if the summons had been issued, and the order of arrest made by him.

SEC. 729. The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney, or agent, and endorse on the summons and subscribe a certificate stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

SEC. 730. The officer making the arrest shall keep the defendant in custody until duly discharged by the order of the justice: *Provided*, That the officer shall not be bound to keep such person under arrest more than twenty-four hours, unless the plaintiff advance each day the expenses of keeping such person, which expense shall be taxed as costs in the action, and in no case shall be a charge against the county.

SEC. 731. The defendant under arrest, on his appearance with the officer, may demand a trial immediately, and, upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the same time, or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff beyond three hours shall discharge the defendant from arrest, but the action may proceed as in other cases.

SEC. 732. If the defendant, on his appearance, demand an adjournment, the same shall be granted, on condition that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pending of the action, and such as may be issued to enforce the judgment therein, if it be found by the justice that the defendant was subject to arrest in such action, or that the sureties will pay to the plaintiff the amount of any judgment he may recover in the action. On filing such undertaking, the defendant shall be discharged from custody.

SEC. 733. The defendant may file a plea under oath, putting in issue the facts stated in the affidavit for the order of arrest, and the plaintiff shall be held to establish such facts, and if he fail to do so, the order of arrest shall be dismissed, and the defendant may proceed upon the undertaking of the plaintiff for his damages occasioned by the arrest.

The provisions of sections numbered from 145 to 153, inclusive of this act, in relation to the examination and discharge of a defendant imprisoned on execution in a civil action, shall apply to justice's courts, and justices of the peace shall have the same powers in their courts as are by said sections granted to the judge.

SEC. 734. A writ to attach the property of the defendant shall be issued by the justice, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts that are required to be shown by the affidavit in cases of attachment in the district court.

SEC. 735. Before issuing the writ, the justice shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages that he may sustain by reason of the attachment.

SEC. 736. The writ may be directed to the sheriff, or any constable of the county, and shall require him to attach and safely keep all the property of the defendant in the county not exempt from execution, or so much thereof, as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking of the sufficient sureties, in an amount sufficient to satisfy such demand and costs, in which case to take such undertaking.

SEC. 737. The provisions of this act, relating to attachments in the district courts, shall be applicable to justices' courts, the word constable being substituted for the word sheriff where the writ is directed to a constable, and the word justice being substituted for the words judge and clerk.

SEC. 738. The plaintiff in an action to recover possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided herein.

SEC. 739. When a delivery is claimed, an affidavit shall be made by the plaintiff, or some one in his behalf, showing:

First. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof.

Second. That the property is wrongfully detained by the defendant.

Third. The alleged cause of the detention thereof according to his best knowledge, information, and belief.

Fourth. That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an attachment or execution against the property of the plaintiff, or if so seized that it is by statute exempt from such seizure; and

Fifth. The actual value of the property.

SEC. 740. The justice shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff or constable of the county to take the same from the defendant and deliver it to the plaintiff upon receiving the undertaking mentioned in the next section.

SEC. 741. Upon the receipt of the affidavit and order, with a written undertaking executed by two or more sufficient sureties, approved by the officer, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the officer shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody, and shall notify the defendant in writing, if he can be found in the county, of the taking of such property, and by what authority.

SEC. 742. At any time within two days after the taking of such property by the officer, the defendant may require the return thereof, upon giving to the officer a written undertaking, with two or more sureties to be approved by the officer, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff for the delivery thereof to the plaintiff, if such delivery be adjudged, and for payment to him of such sum as may from any cause be recovered against the defendant. If a return of the property be not required, it shall be delivered to the plaintiff, except as provided in this act.

SEC. 743. If the property, or any part thereof, be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession.

SEC. 744. When the officer shall have taken the property, as provided in this act, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 745. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the officer, the officer shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff on demand of him or his agent, indemnify the officer against such claim by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff over and above their debts and liabilities, exclusive of property exempt from execution, and are property holders of the county, and no claims to such property by any other person than the defendant or his agent, shall be valid against the officer unless so made.

SEC. 746. The officer shall return the order and affidavit, with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

SEC. 747. The qualification of sureties on the several undertakings required by this chapter shall be as follows:

First. Each of them shall be a resident and property holder within the county.

Second. Each shall be worth double the amount stated in the undertaking over and above all his debts and liabilities, exclusive of property exempt from execution, which facts shall appear by the affidavits of the sureties annexed to the undertaking or endorsed thereon.

CHAPTER III.

PLEADINGS AND TRIAL.

Sec. 748. *Pleadings in justices' court.*
Sec. 749. *Pleadings; when to be in writing.*
Sec. 750. *Oral pleadings; substance to be entered on docket.*
Sec. 751. *Complaint; what shall state.*
Sec. 752. *Answer; what to contain.*
Sec. 753. *Statement equivalent to denial; when.*
Sec. 754. *Set-off. Original account or statement to be exhibited.*
Sec. 755. *Defendant admits genuineness of signature; when.*
Sec. 756. *Either party may object when pleading not explicit.*
Sec. 757. *Variance between proof and allegations; how regarded.*
Sec. 758. *Pleadings; when may be amended.*
Sec. 759. *Questions of title to real property not to be raised.*
Sec. 760. *Actions transferred from one justice to another.*
Sec. 761. *When justice may adjourn trial.*
Sec. 762. *Trial adjourned by consent or an application of either party.*
Sec. 763. *Adjournment had; when.*
Sec. 764. *Adjournment, for how long time.*
Sec. 765. *Dismissal of action.*
Sec. 766. *Either party failing to appear, trial may proceed.*
Sec. 767. *Trial by jury; when demanded; when waived.*
Sec. 768. *What number shall compose jury.*
Sec. 769. *Jurors competent to serve in district court.*
Sec. 770. *Peremptory challenges; how many.*

SEC. 748. The pleadings in justices' courts shall be:

First. The complaint by the plaintiff, stating the cause of action.

Second. The answer by the defendant, stating the grounds of the defence.

SEC. 749. The pleadings shall be in writing and verified by the oath of the party, his agent or attorney, when the action is for a forcible or unlawful entry upon, or forcible or unlawful detention of lands, tenements, or other possessions. In all other cases the pleadings may be oral or in writing.

SEC. 750. When the pleadings are oral, the substance of them shall be entered by the justice in his docket; when in writing, they shall be filed in his office and a reference to them made in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

SEC. 751. The complaint shall state in a plain and direct manner the facts constituting the cause of the action.

SEC. 752. The answer may contain a denial of any of the material facts stated in the complaint which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defence, counter-claim, or set-off, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

SEC. 753. A statement in an answer that the defendant has not sufficient knowledge or information to form a belief in respect to a particular allegation in the previous pleadings of the adverse party shall be equivalent to a denial.

SEC. 754. When the cause of action or defences, or a set-off to a set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court, and to state that there is due to him thereon from the adverse party a specified sum which he claims to recover or set-off; the court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished; or if it be not so exhibited, and a copy furnished, may prohibit its being afterwards given in evidence, unless it appear that such instrument is not in the possession of the party pleading it, or under his control.

SEC. 755. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the maker, indorsers, or assignors thereof, unless he specifically deny the same in his answer under oath.

SEC. 756. Either party may object to the pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 757. A variance between the proof on the trial and the allegations in pleading shall be disregarded as immaterial unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 758. The pleadings may be amended at any time before trial to supply a deficiency or omission when by such amendments substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The court may also, in its discretion, require as a condition of an amendment the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars, but such payment shall not be required unless an adjournment is made necessary by the amendment; nor shall an amendment be allowed after a witness is sworn upon the trial when an adjournment thereby will be made necessary.

SEC. 759. The parties shall not be at liberty to give evidence by which the question of title to real property shall be raised in the trial before a justice; and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath or that of his agent or attorney, or if it appear at any time during the trial that the determination of the action will necessarily involve the decision of the question of title to real property, the justice shall suspend all further proceedings in the action and transmit the pleadings, and a certified transcript of his own proceedings in the action, to the clerk of the district court of his county, and from the time of filing such pleadings and transcript with the clerk of the district court, shall have over the action the same jurisdiction as if it were originally commenced therein: *Provided,* That when the action is certified to the district court, upon the answer of the defendant, he shall file an undertaking, to be approved by the justice, to the effect that he will pay all costs that may be awarded against him on the trial in the district court.

SEC. 760. If at any time before the trial it appear to the satisfaction of the justice before whom the action is brought, by affidavit of either party, that such justice is a material witness for either party, or if either party make affidavit that he has reason to believe and does believe that he can not have a fair and impartial trial before such justice, the action shall be transferred to some other justice of the same county; and in case of a jury being demanded, and affidavit of either party is made that he can not have a fair and impartial trial on account of the bias or prejudice of the citizens of the precinct or township against him, the action shall be transferred to some other justice of the peace in the county. The justice to whom the action may be transferred by the provisions of this section shall have and exercise the same jurisdiction over the action as if it had been originally commenced before him. The justice ordering the transfer of the action to another justice, shall immediately transfer to the latter, on the payment of the costs due from the party procuring the transfer, all the papers in the action, together with a certified transcript of the proceedings that have been had in the action.

SEC. 761. Upon the return day of the summons, if a jury be demanded, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party, as follows:

First. When a party who is not a resident of the county is in attendance, the adjournment not to exceed twenty-four hours; when the defendant in attendance is under arrest, the adjournment not to exceed three hours.

Second. In other cases not to exceed five days.

SEC. 762. The trial may be adjourned by consent, or upon the applicaton of either party without the consent of the other, for a period not exceeding ten days (except as provided in the next section), as follows:

First. The party asking the adjournment shall, if required by his adversary, prove by his own oath or otherwise that he can not, for want of material testimony which he expects to procure, safely proceed to trial, and shall show in what respects the testimony expected is material, and the diligence he has used to procure it.

Second. The party asking the adjournment shall also, if required by the adverse party, consent that the testimony of any witness of the adverse party who is in attendance be then taken by deposition before the justice, which shall accordingly be done, and the testimony so taken may be read on the trial with the same effect and subject to the same objections as if the witness were present; but such objections shall be made at the time of taking the deposition.

Third. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it is considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. It shall appear by the affidavit of the party or otherwise that due diligence has been used to obtain the evidence wanting before a postponement of the trial is made therefor.

SEC. 763. An adjournment may be had either at the time of joining issue or at any time subsequent, to which the case may stand adjourned on application of either party for a period longer than ten days, but not to exceed one month from the time of the return of the summons, upon proof by the oath of the party, or otherwise, to the satisfaction of the justice, that such party can not be ready for trial before the time to which he desires an adjournment, for want of material evidence, particularly describing it, and that the delay has not been made necessary by any act of negligence on his part since the action was commenced; that he has used due diligence (which shall be stated) to procure it, and has been unable to do so, and that he expects to procure the evidence at the time stated by him: *Provided,* That if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered and overruled as improper, the adjournment shall not be had.

SEC. 764. No adjournment shall be granted for a period longer than ten days upon the application of either party, except on condition that such party file an undertaking, with sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment that may be recovered against the party applying.

SEC. 765. If the plaintiff fails to appear at the time set for trial, and the defendant appears and demands it, the action shall be dismissed.

SEC. 766. If either party fails to appear at the time set for trial, or fails to make the necessary pleading or proofs on his part, the case may nevertheless proceed at the request of the party present, and judgment shall be given in conformity with the pleadings and proofs.

SEC. 767. A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it; when demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither desire an adjournment, the time and place shall be determined by the justice, and shall be within the next two days, or the same day. The jury shall be summoned, upon an order of the justice, from the citizens of the city or township, and not from the bystanders.

SEC. 768. At the time appointed for the trial, the justice shall proceed to call from the jurors summoned the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number not more than twelve nor less than six, and shall not be summoned until their legal fees for one day's service shall be paid into the hands of the justice by the party demanding the jury.

SEC. 769. Each juror shall be competent to serve as such in the district court. If a sufficient number of competent jurors do not attend, the justice shall direct others to be summoned from the vicinity, and not from the by-standers, sufficient to complete the jury.

SEC. 770. Either party may challenge peremptorily one-half of the jury. Challenge for cause may be made by either party for any cause that a challenge for cause can be made in the district court. Challenges for cause shall be tried by the justice.

CHAPTER IV.

JUDGMENT AND EXECUTION.

Sec. 771. *Judgment entersd with costs; when.*
Sec. 772. *Defendant failing to appear, judgment for plaintiff; in what case.*
Sec. 773. *Justice to hear evidcnce and decide questions of fact and law.*
Sec. 774. *Judgment to be rendered immediately after verdict.*
Sec. 775. *When action against one or more defendants.*
Sec. 776. *When judgment rendered exceed jurisdiction.*
Sec. 777. *If defendant confess judgment.*
Sec. 778. *When defendant subject to imprisonment to be stated in judgment.*
Sec. 779. *Judgment to be entered in favor of defendant; when.*
Sec. 780. *Justice to give transcript of judgment.*
Sec. 781. *Execution for enforcement of judgment; when issued.*
Sec. 782. *Execution; to whom directed.*
Sec. 783. *Officer shall proceed to execute.*

SEC. 771. Judgment that the action be dismissed without prejudice to a new action may be entered with costs in the following cases:

First. When the plaintiff voluntarily dismisses the action before it is finally submitted.

Second. When he fails to appear at the time set for trial, or within one hour thereafter, and the defendant appears and demands that the action be dismissed.

Third. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment. If not taken at the trial, it shall be deemed waived and shall not be cause of reversal.

SEC. 772. When the defendant fails to appear and answer, judgment shall be given for the plaintiff, as follows: When a copy of the account, note, bill, or other obligation upon which the action is brought was filed with the justice at the time the summons was issued, judgment shall be given without further evidence for the sum specified in the summons.

SEC. 773. Upon issue joined, or when the defendant fails to appear, except cases mentioned in the last section, if a trial by jury be not demanded, the justice shall hear the evidence, and decide all questions of fact and of law, and render judgment accordingly.

SEC. 774. Upon a verdict by a jury, the justice shall immediately render judgment accordingly. When the trial is by the justice, judgment shall be entered immediately after the trial, if the defendant has been arrested and is still in custody. In other cases, it shall be entered within four days after the close of the trial.

SEC. 775. If the action be on a contract against two or more defendants, and the summons be served on one or more but not on all, the judgment shall be entered up only against those who were served, if the contract be a several or a joint and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all and the separate property of the defendants served.

SEC. 776. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

SEC. 777. If the defendant at any time before trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs there accrued, but if he do not accept such offer before the trial, and fail to recover in the action a sum larger than the one mentioned in the offer, he shall not recover any costs accruing after the offer was made, but the offer and failure to accept shall not be given in evidence to affect the recovery otherwise than as to costs.

SEC. 778. When a judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment, and entered in the docket.

SEC. 779. When the prevailing party is intitled to costs by this chapter, the justice shall add their amount to the verdict, or in case of the failure of the plaintiff to recover, or in case of the dismissal of the action, shall enter up judgment in favor of the defendant for the amount of such costs.

SEC. 780. The justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed on the judgment docket in the office of the district clerk of the county where the judgment was rendered. The time of the receipt of the transcript by the district clerk shall be noted by him thereon, and entered on the docket, and from that time the judgment shall be a lien upon the real property of the defendant, the same as judgments in district courts; and executions may be issued by the district clerk, on such judgment, to the sheriff of any county of the Territory, in the same manner as upon judgments rendered in the higher courts.

"No judgment rendered by a justice of the peace shall be a lien, except when a transcript is filed, as above provided; and no levy of an execution from a justice's court shall be made on real property. When such transcript is to be filed in any other county than the one in which the justice resides, such transcript shall be accompanied by the certificate of the county clerk as to the official character of the justice in the county where he resides. Such judgment shall be a lien upon and bind the lands and tenements of the judgment debtor, situated in the county where the transcript may be filed and recorded in favor of such judgment creditor, as if such judgment had been rendered in the district court of such county."

NOTE.—Act February 5th, 1876.

SEC. 781. Execution for the enforcement of judgment in a justice's court may be issued on the application of the party entitled thereto, at any time within five years from the entry of the judgment.

SEC. 782. The execution, when issued by a justice, shall be directed to the sheriff, or to a constable of the county, and subscribed by the justice issuing the same, and shall bear date the day of its delivery to the officer to be executed; it shall intelligibly refer to the judgment by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when, it was rendered, the amount of the judgment, if it be for money, and if less than the whole is due, the amount due thereon; it shall contain, in like cases, similar directions to the sheriff or constable as are required in executions issued by the clerk of the district court, except as to levying on real property.

SEC. 783. The sheriff or constable to whom the execution is delivered, shall proceed to execute the same in the same manner as the sheriff is required to execute executions issued by the clerk of the district court, and the constable, when the execution is directed to him, shall be vested for that purpose with all the power of the sheriff, except as to levying on real property, and after issuing an execution, and either before or after its return (if the same be returned unsatisfied either in whole or in part), the judgment creditor shall be entitled to an order from the justice requiring the judgment debtor to attend at a time to be designated in the order, and answer concerning his property before such justice, and the attendance of such may be enforced by the justice. On his attendance, such debtor may be examined on oath, concerning his property, and any person alleged to have in his hands property, moneys, effects, or credits of the judgment debtor, may also be required to attend and be examined, and the justice may order any property in the hands of the judgment debtor, or any other person, not exempt from execution, belonging to such debtor, to be applied towards the satisfaction of such judgment, and the justice may enforce such order by imprisonment until complied with; but no judgment debtor or other person shall be required to attend before any justice out of the county in which he resides.

CHAPTER V.

GENERAL PROVISIONS.

Sec. 784. *Provisions of this act to apply in justices' courts, same as in district courts.*
Sec. 785. *Justice to keep docket.*
Sec. 786. *How entries to be made.*
Sec. 787. *Docket to be indexed.*
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Sec. 790. *Justice elected to fill vacancy.*

Sec. 791. *Summons, execution, &c., to be filled up.*
Sec. 792. *In case ef sickness of justice another justice may attend.*
Sec. 793. *Justice may depute any person to serve papers.*
Sec. 794. *Authority of person so deputed.*
Sec. 795. *Retiring constable may execute processes already begun.*
Sec. 796. *Justice may punish for contempt.*
Sec. 797. *Act for which person convicted, to be put in docket.*
Sec. 798. *Justice to issue subpœnas; when.*
Sec. 799. *Depositions to be taken as in district courts.*
Sec. 800. *New trial.*
Sec. 801. *Applications made upon affidavit.*
Sec. 802. *Party may appeal to district court.*
Sec. 803. *Undertaking to be filed by party appealing.*
Sec. 804. *Justice to make out transcript.*
Sec. 805. *Party appealing failing to reduce or enlarge judgment.*
Sec. 806. *Appeal from justices' courts; how tried.*
Sec. 807. *Stay of proceedings.*
Sec. 808. *Costs allowed prevailing party.*
Sec. 809. *Justice to receive and pay over moneys.*
Sec. 810. *Justice may require deposit before issuing summons.*

SEC. 784. The provisions of this act, in relation to parties to actions in the district courts, and relative to practice, pleading, and trial, shall, so far as the same are applicable, and do not conflict with this title, be observed in justices' courts.

SEC. 785. Every justice shall keep a book denominated a docket, in which he shall enter:

First. The title of every action or proceeding.

Second. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand.

Third. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts.

Fourth. The time when the parties, or either of them, appear, or their non-appearance if default be made; a minute of the pleadings and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleadings, and of all motions made during the trial by either party, and his decisions thereon.

Fifth. Every adjournment, stating on whose application, whether on oath, evidence, or consent, and to what time.

Sixth. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial, and return of the jury.

Seventh. The names of the jury who appear and are sworn, the names of all witnesses sworn, and at whose request.

Eighth. The verdict of the jury, and when received, if the jury disagree and are discharged, the fact of such disagreement and discharge.

Ninth. The judgment of the court, specifying the costs included, and the time when rendered.

Tenth. The issuing of the execution, when issued, and to whom delivered, the renewals thereof, if any, and when made, and a statement of any money paid to the justice, and when and by whom.

Eleventh. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed, with the amount thereof, and the names of the sureties.

Twelfth. A note of any other proceedings taken in the action or proceedings.

SEC. 786. The several particulars of the last section specified shall be entered under the title to the action to which they relate, and at the time when they occur. Such entries in a justice's docket, or a transcript thereof certified to by the justice or his successor in office, shall be primary evidence to prove the facts so stated therein.

SEC. 787. A justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index in the alphabetical order of the first letter of the family names.

SEC. 788. It shall be the duty of every justice upon the expiration of his term ot office, to deposit with his successor his official dockets, as well his own as those of his predecessors, which may be in his custody, to be kept as public records. If the office of a justice become vacant by his death, removal from the township or city, or otherwise, before his successor is elected and qualified, the dockets in possession of such justice shall be deposited with the county clerk of the county, to be by him delivered to his successor in office of the justice.

SEC. 789. Any justice with whom a docket of his predecessor is deposited, may issue execution or other process upon a judgment there entered and unsatisfied, in the same manner and with the same effect as the justice with whom the judgment was entered might have done. In case of the creation of a new county, or the change of the boundaries between two counties, any justice, in whose hands the docket of a justice, formerly acting as such within the same Territory, may come, shall, for the purpose of this section, be considered the successor of said former justice.

SEC. 790. The justice elected to fill a vacancy shall be deemed the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires the same or another person elected to take office in the same township or city from that time shall be deemed the successor.

SEC. 791. The summons, execution, and every other paper made or issued by a justice, except a subpœna, shall be filled up without a blank left to be filled by another, otherwise it shall be void.

SEC. 792. In case of sickness or other disability, or necessary absence of a justice on a return of summons, or at any time appointed for a trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the power for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice, subscribed by him, shall be made in the docket of the justice before whom the summons was returnable.

SEC. 793. A justice may, at the request of a party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order, to arrest the defendant with or without a writ of attachment. Said justice shall be liable on his official bond for all official acts of the person so deputed. Such deputation shall be in writing made on the process, and a note thereof made in the justice's docket.

Sec. 794. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process, and shall be subject to the same obligations.

Sec. 795. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he were still in office, and his sureties shall be liable to the same extent.

Sec. 796. A justice may punish any person guilty of a contempt of his court, as defined by this act, by fine or imprisonment, or both, but such fine shall not exceed one hundred dollars, nor imprisonment shall not exceed one day.

Sec. 797. The acts for which the person is convicted shall be particularly specified in the justice's docket, and the judgment entered thereon.

Sec. 798. Justices of the peace may issue subpœnas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the county.

Sec. 799. Depositions may be taken in the same manner, to be used in justices' courts, as they are taken to be used in the district court.

Sec. 800. A new trial may be granted by the justice, on motion, within ten days after the entry of judgment, for any of the following causes:

First. Accident or surprise which ordinary prudence could not have guarded against.

Second. Excessive damages, appearing to have been given under the influence of passion.

Third. Insufficiency of the evidence to justify the verdict, or other decision.

Fourth. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

Sec. 801. The application shall be made upon affidavit and notice; the affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter-affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

Sec. 802. Any party dissatisfied with a judgment rendered in a justice's court, may appeal therefrom to the district court of the county, at any time within thirty days after the rendition of the judgment. The appeal shall be taken by filing a notice of appeal with the justice, and serving a copy of the same upon the adverse party.

Sec. 803. The party appealing shall file with the justice, within the time allowed for taking an appeal, an undertaking in double the amount of the judgment appealed from, or if the judgment be for the recovery of specific personal property, in double the value of such property, with sufficient sureties, and conditioned that the party appealing will pay any judgment that may be rendered against him in the district court, as well as all costs that may be awarded against him, and for the prosecution of such appeal to effect, or if the party in whose favor judgment is rendered appeals, the bond shall be conditioned for the prosecution of the appeal to effect and for the payment of all costs that may be adjudged against the appealing party. The undertaking shall be accompanied by the affidavit of the sureties that they are residents of the county, and are each worth, over and above their debts, liabilities, and property by law exempt from execution, the amount specified in the undertaking, but several sureties may state that they are worth sums less than the amount stated in the undertaking besides such exemptions, if the whole amount equals the amount of two sufficient sureties.

SEC. 804. Upon receiving the notice of appeal and the undertaking, as provided in the last section, and payment of fees therefor, the justice shall make out a full and complete transcript from his docket of all the proceedings in the action before him, and transmit it, together with all the motions, pleadings, and all other papers belonging to the said cause, to the clerk of the district court of the county, which transcript shall be certified by such justice, within ten days after the filing of the appeal, bond, and notice of appeal; the justice may be compelled by an order of the district court entered on motion, to transmit any or all of such papers, and may be fined for neglect or refusal to transmit the same.

SEC. 805. If the party appealing fail to reduce or enlarge the judgment appealed from ten dollars or more, or revise the same in the district court, he shall not recover any of the costs of the appeal.

SEC. 806. All appeals from justices' courts shall be tried anew in the district court, on the papers filed in the justice's court, unless the court, for good cause shown, and on such terms as may be just, allow other papers to be filed in such action. Either party may demand a trial by jury in the district court. Each party shall have the benefit of all legal objections made in the justice's court.

SEC. 807. If an execution shall have been issued on a judgment appealed from, on the filing of the appeal bond, the justice shall by order direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

SEC. 808. Costs shall be allowed the prevailing party in justices' courts.

SEC. 809. Justices of the peace shall receive from the sheriff or constable of their (respective) counties, all moneys collected on any process or order issued by their courts respectively, and all moneys paid to them in the official capacity, and shall pay the same over to the parties entitled or authorized to receive them without delay. For a violation of this section they may be removed from their office, and shall be deemed guilty of a misdemeanor.

SEC. 810. Justices of the peace may in all cases require a deposit of money or an undertaking as surety for costs of court before issuing a summons.

CHAPTER VI.

Sec. 811. *Repealing former act.*
Sec. 812. *When to take effect.*

SEC. 811. The act entitled "An act to regulate proceedings in civil cases in the courts of justice of Montana Territory," passed at the first session of the legislative assembly of Montana Territory; the act entitled "An act to regulate proceedings in civil cases in the courts of justice of Montana Territory," approved December twenty-third, 1867, and all acts amendatory to said last mentioned acts, and all other acts or parts of acts in conflict with the provisions of this act, are hereby repealed.

SEC. 812. This act shall take effect and be in force on and after the first day of August, A. D. 1872.

Approved January 12th, 1872.

NOTE—Sections 676 to 812, inclusive of the foregoing code. except where otherwise specially noted are taken from the Act of January 12th, 1872.

TITLE XIX.

UNREPEALED LAWS.

Sec. 813. *Limitation to the issuing of an execution.*
Sec. 814. *Procedure to collect costs.*
Sec. 815. *Officers to furnish an itemized account of his costs.*
Sec. 816. *Bills of exceptions; when to be signed.*
Sec. 817. *Bill of exceptions on an appeal from an order deciding motion for new trial.*
Sec. 818. *Mileage of officer when serving more than one process in same direction.*
Sec. 819. *Judgment for costs.*
Sec. 820. *Costs in probate court to follow the judgment regardless of the amount.*

SEC. 813. After the lapse of five years from the entry of judgment, an execution can only be issued by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent, or non-resident, or can not be found, to make such service, in which case service may be made by publication or in such other manner as the court shall direct; such leave shall not be given unless it be established by the oath of the party, or other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due; but the leave shall not be necessary when the execution has been issued on the judgment within the five years, and returned unsatisfied in whole or in part.

SEC. 814. In all cases, after final judgment, it shall be lawful for the clerk to make out a tax bill of costs against the party incurring said costs, and certify the same under the seal of the court, which, being delivered to the sheriff of the proper county, he shall demand payment thereof from the person therein charged, and if payment shall not be made within twenty days after such demand, the sheriff shall levy the same on the goods and chattels, lands and tenements of the person so chargeable, and proceed thereon in all things as on a writ of execution.

SEC. 815. And to the end that all persons chargeable with fees due to any sheriff, clerk, or any officer of any court in this Territory, may certainly know for what the same is chargeable, none of the fees of any such officers shall be payable to any such officer, until an itemized account of the same shall have been presented to the person chargeable with the same, and signed by the officer to whom the same are payable, or until a fee-bill shall have been issued by the clerk as above provided.

SEC. 816. All bills of exceptions shall be reduced to form unless noted by the clerk and signed during the term in which the same is tried, except in cases where the counsel consent, or the judge, by an entry on the record, direct that it may be prepared in vacation, and signed *nunc pro tunc*. The bill of exceptions must be signed by the judge who tried the cause, and if he has inadvertantly omitted to sign a bill of exceptions, he may, on motion, be permitted to do so, although his term of office has expired, or said office has otherwise become vacant.

SEC. 817. When a motion for new trial is heard and decided upon the minutes of the judge, and an appeal is taken from the decision, a bill of exceptions must be settled in the usual form, upon which the argument of the appeal must be had.

SEC. 818. When any sheriff, constable, or coroner serves more than one process or notice in the same direction, not requiring more than one journey from his office, he shall charge for and receive mileage only for the most distant service.

SEC. 819. Upon the dismissal or other disposition of an action in which the court has jurisdiction of the subject matter of the action, it shall be the duty of the court to render such judgment for costs as is according to law.

SEC. 820. In all cases adjudicated in the probate court, the costs shall follow the judgment without reference to the amount or value of the property in controversy, and such costs shall be taxed by said court in favor of the prevailing party.

NOTE.—Sections 813 to 820, both inclusive, are from the act of February 13th, 1874.

SECOND DIVISION.

PROBATE PRACTICE ACT.

CHAPTER I.

ARTICLE I.

ORGANIZATION AND JURISDICTION OF PROBATE COURTS IN MONTANA.

Sec. 1. *Jurisdictional powers; proceedings, how construed.*
Sec. 2. *Powers of probate judge at chambers.*
Sec. 3. *When judge may hold terms in another county.*
Sec. 4. *Authority by which probate judge may act in another county.*
Sec. 5. *When seal may and may not be affixed.*

SECTION 1. The probate court has jurisdiction:

First. To open and receive proof of last wills and testaments, and to admit them to probate.

Second. To grant letters testamentary, of administration, and of guardianship, and to revoke the same.

Third. To appoint appraisers of estates of deceased persons.

Fourth. To compel executors, administrators, and guardians to render accounts.

Fifth. To order the sale of property of estates or belonging to minors.

Sixth. To order the payment of debts due from estates.

Seventh. To order and regulate all distributions and partitions of property or estates of deceased persons.

Eighth. To compel the attendance of witnesses and the production of title deeds, papers, and other property of an estate or of a minor.

Ninth. To exercise the powers conferred by this act.

Tenth. To make such orders as may be necessary to the exercise of the powers conferred upon it.

The proceedings of probate courts shall be construed in the same manner and with like intendments as the proceedings of courts of general jurisdiction, and to its records, judgments, and decrees there is accorded like force and effect and legal presumptions, as to the records, orders, decrees, and judgments of district courts.

SEC. 2. The judges of probate courts may, at chambers, appoint appraisers, receive inventories and accounts, to be filed in probate court; suspend the powers of executors, administrators, or guardians, in the cases allowed by law; grant special letters of administration or guardianship; approve claims and bonds, and direct the issuance from the probate courts of all writs and processes necessary in the exercise of their power.

SEC. 3. Any probate judge may hold terms, or portions of terms, in any other county than, as well as in, that for which he was elected, in cases of sickness of the proper judge, or to hear, try, adjudicate, and determine all causes and matters in which the probate judge of the proper county is interested or has been employed as an attorney, or is disqualified by law from trying or adjudicating.

SEC. 4. When, from any of the causes mentioned in the preceding section, a term or part of a term of a probate court can not be held in a county by the judge thereof, the judge disqualified may, by the consent of parties to the action or proceedings, which such judge is disqualified from adjudicating, designate the county, or probate judge of some other county, to hold such term or portion of term; and if the parties fail thus to consent, a certificate of such fact of disqualification, or in case of sickness of the judge, then of the fact of such sickness, must be transmitted by the clerk of such court to the governor, who must thereupon direct some probate judge of a neighboring county to hold such term or part of term.

SEC. 5. The seal of the court need not be affixed to any proceedings therein, except:

First. To a writ.

Second. To the proof of a will or the appointment of an executor, administrator, or guardian.

Third. To the authentication of a copy of a record or other proceeding of the court, or officer thereof, for the purpose of being used in evidence in another court.

ARTICLE II.

OF LOCAL JURISDICTION.

Sec. 6. *County where wills may be proved and letters granted.*
Sec. 7. *When court of first county petitioned to have exclusive jurisdiction.*

SEC. 6. Wills must be proved, and letters testamentary or of administration granted:

First. In the county of which the decedent was a resident at the time of his death, in whatever place he may have died.

Second. In the county in which the decedent may have died leaving estate therein, he not being a resident of the Territory.

Third. In the county in which any part of the estate may be, the decedent having died out of the Territory, and not resident thereof at the time of his death.

Fourth. In the county in which any part of the estate may be, the decedent not being a resident of the Territory, and not having estate in the county in which he died.

Fifth. In all other cases, in the county where application for letters is first made.

SEC. 7. When the estate of decedent is in more than one county, he having died out of the Territory, and not having been a resident thereof at the time of his death, or, being such non-resident, and dying within the Territory, and not leaving estate in the county where he died, the probate court of that county in which application is first made for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate.

CHAPTER II.

ARTICLE I.

PROBATE OF WILLS.

Sec. 8. *Duty of custodian of a will.*
Sec. 9. *Interested party may petition to have will proved.*
Sec. 10. *Petition for probate of will must show.*
Sec. 11. *Executor failing to petition renounces his right.*
Sec. 12. *Will in possession of third party.*
Sec. 13. *Hearing of petition and notice of.*
Sec. 14. *Notice, how addressed and on whom served.*
Sec. 15. *Powers of judge at chambers concerning wills.*
Sec. 16. *Proof of notice and proof of will.*
Sec. 17. *Who may contest will.*
Sec. 18. *Will admitted to probate on testimony of one witness.*
Sec. 19. *Olographic wills proved as other writings are.*

Sec. 8. Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the probate court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby.

Sec. 9. Any executor, devisee, or legatee named in any will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the same be in writing in his possession or not, or is lost or destroyed, or beyond the jurisdiction of the Territory, or a nuncupative will.

Sec. 10. A petition for the probate of a will must show:

First. The jurisdictional facts.

Second. Whether the person named as executor consents to act, or renounces his right to letters testamentary.

Third. The names, ages, and residence of the heirs and devisees of the decedent, so far as known to the petitioner.

Fourth. The probable value and character of the property of the estate.

Fifth. The name of the person for whom letters testamentary are prayed.

No defect of form or in the statement of jurisdictional facts actually existing shall make void the probate of a will.

Sec. 11. If the person named in a will as executor, for thirty days after he has knowledge of the death of the testator, and that he is named as executor, fails to petition the proper court for the probate of the will, and that letters testamentary be issued to him, he has renounced his right to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

SEC. 12. If it is alleged in any petition that any will is in the possession of a third person, and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring him to produce it at a time named in the order. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he produces it.

SEC. 13. When the petition is filed and the will produced, the probate judge must fix a day for hearing the petition, not less than ten nor more than thirty days from the production of the will. Notice of the hearing shall be given by the clerk of the court, by publishing the same in a newspaper of the county; if there be none, then by three written or printed notices posted at three of the most public places in the county. If the notice is published in a weekly newspaper, it must appear therein on at least three different days of publication, and if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and the last day being included. If the notice is by posting, it must be given at least ten days before the hearing.

SEC. 14. Copies of the notice of the time appointed for the probate of the will must be addressed to the heirs of the testator resident in the Territory, at their places of residence, if known to the petitioner, and deposited in the post office, with the postage thereon prepaid, at least ten days before the hearing. If their places of residence be not known, the copies of notice may be addressed to them and deposited in the post office at the county seat of the county where the proceedings are pending. A copy of the same notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor, not petititioning, if their places of residence be known. Proof of mailing the copies of the notice must be made at the hearing. Personal service of copies of the notice at least ten days before the day of the hearing is equivalent to mailing.

SEC. 15. The probate judge may, out of term time or at chambers, receive petitions for the probate of wills, and make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses, and may appoint special terms of his court for hearing the petitions, trials of issues, and admitting wills to probate.

SEC. 16. At the time appointed for the hearing, or the time to which the hearing may have been postponed, the court, unless the parties appear, must require proof that the notice has been given, which being made, the court must hear testimoney in proof of the will.

SEC. 17. Any person interested may appear and contest the will. Devisees, legatees, or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the court for that purpose; but a contest made by an attorney appointed by the court, does not bar a contest after probate by the party so represented, if commenced within the time provided in Article IV of this chapter;

nor does the non-appointment of an attorney by the court of itself invalidate the probate of a will.

SEC. 18. If no person appears to contest the probate of a will, the court may admit it to probate on the testimoney of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

SEC. 19. An olographic will may be proved in the same manner that other writings are proved.

ARTICLE II.

CONTESTING PROBATE OF WILLS.

Sec. 20. *Proceedings to contest will.*
Sec. 21. *Trial by jury and trial by court.*
Sec. 22. *Special verdict; judgment; proofs to be recorded.*
Sec. 23. *When will contested and witnesses absent, how proved.*
Sec. 24. *Written evidence subscribed, perpetuated.*
Sec. 25. *Court being satisfied must attach certificate of proof.*
Sec. 26. *Will, proof and testimoney recorded by the clerk.*

SEC. 20. If any one appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may demur thereto to any of the grounds of demurrer provided for in the civil practice act of this Territory applicable thereto. If the demurrer is sustained, the court must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the demurer is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing or otherwise obviating or avoiding the objections. Any issues of fact thus raised, involving: 1, the competency of the decedent to make a last will and testament; 2, the freedom of the decedent, at the time of the execution of the will, from duress, menace, fraud, or undue influence; 3, the due execution and attestation of the will by the decedent or subscribing witnesses; or, 4, any other substantial grounds affecting the validity of the will, must, on request of either party in writing filed three days prior to the day set for the hearing, be tried by a jury. If no jury is demanded, the court must try and determine the issues joined.

On the trial the contestant is plaintiff, and the petitioner is defendant.

SEC. 21. When a jury is demanded, the probate court must summon and impannel a jury to try the case in the manner provided for summoning and impanneling trial juries in courts of record, and the trial must be conducted in accordance with the provisions of the civil practice act for trials of issues of fact. A trial by the court must be conducted as provided in said civil practice act in cases of trials by the court.

SEC. 22. The jury, after hearing the case, must return a special verdict upon the issues submitted to them by the court; upon which the judgment of the court must be rendered, either admitting the will to probate or rejecting it. In either case the proofs of the subscribing witnesses must be reduced to writing. If the will is admitted to probate, the judgment, will, and proofs must be recorded.

Sec. 23. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

Sec. 24. The testimony of each witness, reduced to writing and signed by him, shall be good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead or has permanently removed from the Territory.

Sec. 25. If the court is satisfied upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the testator, at the time of its execution, was of sound and disposing mind, and not acting under duress, menace, fraud or undue influence, a certificate of the proof and the facts found, signed by the probate judge, and attested by the seal of the court, must be attached to the will.

Sec. 26. The will and certificate of the proof thereof, together with all the testimony taken, must be filed by the clerk, and recorded by him in a book to be provided for the purpose.

ARTICLE III.

PROBATE OF FOREIGN WILLS.

Sec. 27. *Proved foreign wills to be allowed and recorded.*
Sec. 28. *When produced by interested party, what notice to be giuen.*
Sec. 29. *Foreign proved will as effective as if proved here.*

Sec. 27. Every will duly proved and allowed in any other State or Territory of the United States, or in any foreign country or State, may be allowed and recorded in the probate court of any county in which the testator shall have left any estate.

Sec. 28. When a copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court or judge must appoint a time for the hearing; notice whereof must be given as hereinbefore provided for an original petition for the probate of a will.

Sec. 29. If, on the hearing, it appears upon the face of the record that the will has been proved, allowed, and admitted to probate, in any other State or Territory of the United States, or in any foreign country, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this Territory, it must be admitted to probate, and have the same force and effect as a will admitted to probate in this Territory, and letters testamentary, or of administration issued thereon.

ARTICLE IV.

CONTESTING WILLS AFTER PROBATE.

Sec. 30. *Will may be contested within one year after probate; petition for.*
Sec. 31. *Citation to show cause to issue to all parties.*
Sec. 32. *Trial upon citation to show cause.*
Sec. 33. *Probate may be annulled upon trial by jury or court.*
Sec. 34. *Powers and liabilities of executor on revocation.*
Sec. 35. *Costs on petition to revoke.*
Sec. 36. *Limitation to contests.*

SEC. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same, or the validity of the will. For that purpose he must file in the court in which the will was proved a petition, in writing, containing his allegations against the validity of the will, or against the sufficiency of the proof, and praying that the probate may be revoked.

SEC. 31. Upon filing the petition, a citation must be issued to the executors of the will, or to the administrators, with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the Territory, so far as known to the petitioner, or to their guardians, if any of them are minors; or to their personal representatives, if any of them are dead, requiring them to appear before the court, on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

SEC. 32. At the time appointed for showing cause, or at any time to which the hearing is postponed, personal service of the citations having been made upon any persons named therein, the court must proceed to try the issues of fact joined in the same manner as in an original contest of a will.

SEC. 33. In all cases of petitions to revoke the probate of a will, wherein the original probate was granted without a contest, on written demand of either party, filed three days prior to the hearing, a trial by jury must be had, as in cases of the contest of an original petition to admit a will to probate. If, upon hearing the proofs of the parties, the jury shall find, or, if no jury is had, the court shall decide, that the will is for any reason invalid, or that it is not sufficiently proved to be the last will of the testator, the probate must be annulled and revoked.

SEC. 34. Upon the revocation being made, the powers of the executor or administrator, with the will annexed, must cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

Sec. 35. The fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate be confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

Sec. 36. If no person, within one year after the probate of a will, contest the will or the validity thereof, the probate of the will is conclusive; saving to infants, and persons of unsound mind, a like period of one year after their respective disabilities are removed.

ARTICLE V.

PROBATE OF LOST OR DESTROYED WILL.

Sec. 37. *Proof of lost or destroyed will.*
Sec. 38. *What must be proven of a lost or destroyed will.*
Sec. 39. *Proceedings when lost will is established.*
Sec. 40. *Previous administrator or executor may be restrained.*

Sec. 37. Whenever any will is lost or destroyed, the probate court must take proof of the execution and validity thereof, and establish the same; notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases. All the testimony given must be reduced to writing, and signed by the witnesses.

Sec. 38. No will shall be proved as a lost or destroyed will unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently destroyed in the lifetime of the testator; nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.

Sec. 39. When a lost will is established, the provisions thereof must be distinctly stated and certified by the probate judge, under his hand and the seal of the court; and the certificate, together with the testimony upon which it is founded, must be filed and recorded as other wills are filed and recorded; and letters testamentary or of administration, with the will annexed, must be issued thereon, in the same manner as upon will produced and duly proved. The testimony must be reduced to writing, signed, certified, and filed as in other cases, and shall have the same effect as evidence, as provided in section 20 of this chapter.

Sec. 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

ARTICLE VI.

PROBATE OF NUNCUPATIVE WILLS.

Sec. 41. *May be proven within six months; petition for.*
Sec. 42. *When court may entertain petition.*
Sec. 43. *Contests conducted as in cases of written wills.*

SEC. 41. Nuncupative wills may, at any time within six months after the testamentary words are spoken by the decedent, be admitted to probate on petition and notice as provided in Article I Chapter II, of this act. The petition, in addition to the jurisdictional facts, must allege that the testamentary words, or the substance thereof, were reduced to writing within thirty days after they were spoken, which writing must accompany the petition.

SEC. 42. The probate court must not receive or entertain a petition for the probate of a nuncupative-will until the lapse of fourteen days from the death of the testator, nor must such petition at any time be acted on until the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife, if any, and all the other persons, resident in the Territory or county, interested in the estate, are notified as hereinbefore provided.

SEC. 43. Contests of the probate of nuncupative wills, and appointments of executors and administrators of the estate devised thereby, must be had, conducted, and made as hereinbefore provided in cases of the probate of written wills.

CHAPTER III.

ARTICLE I.

LETTERS TESTAMENTARY AND OF ADMINISTRATION—HOW AND TO WHOM ISSUED.

Sec. 44. *Letters to executors; must qualify.*
Sec. 45. *Who incompetent to act as executor; letters with the will annexed.*
Sec. 46. *Objection to executors and pitition for administration.*
Sec. 47. *Effect of marriage when woman appointed executrix.*
Sec. 48. *On death of executor how administered.*
Sec. 49. *In case of executor be a minor or absent from the Territory.*
Sec. 50. *When one or a majority of executors or administrators may act.*
Sec. 51. *Letters and powers of administrators with the will annexed.*

SEC. 44. The court admitting a will to probate, after the same is proved and allowed, must issue letters thereon to the persons named, therein as executors, who are competent to discharge the trust, who must appear and qualify, unless objection is made, as provided in section 41 of this act.

SEC. 45. No person is competent to serve as executor who, at the time the will is admitted to probate, is:

First. Under the age of majority.

Second. Convicted of an infamous crime.

Third. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence or want of understanding or integrity, or who is absent from or resides out of the Territory.

If the sole executor, or all the executors are incompetent, or renounce or fail to apply for letters, or to appear and qualify, letters of administration, with the will annexed, must be issued.

Sec. 46. Any person interested in a will may file objections in writing to granting letters testamentary to the persons named as executors, or any of them, and the objections must be heard and determined by the court. A petition may at the same time be filed for letters of administration with the will annexed.

Sec. 47. When an unmarried woman, appointed executrix, marries, her authority is extinguished. When a married woman is named as executrix, she may be appointed and serve in every respect as a *feme sole*.

Sec. 48. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration, with the will annexed, of the estate of the first testator left unadministered, must be issued.

Sec. 49. Where a person absent from the Territory, or a minor, is named executor, if there is another executor who accepts the trust and qualifies, the latter may have letters testamentary and administer the estate until the return of the absentee, or the majority of the minors, who may then be admitted a joint executor. If there is no other executor, letters of administration, with the will annexed, must be granted, but the court may, in its discretion, revoke them on the return of the absent executor or the arrival of the minor at the age of majority.

Sec. 50. When all the executors named are not appointed by the court, those appointed have the same authority to perform all acts and to discharge the trust required by the will as effectually for every purpose as if all were appointed and should act together. Where there are two executors or administrators, the act of one alone shall be effectual if the other is absent from the Territory, or laboring under any legal disability from serving, or if he has given his co-executors or co-administrators authority, in writing, to act for both; and where there are more than two executors or administrators, the act of the majority shall be valid.

Sec. 51. Administrators, with the will annexed, have the same authority over the estates which executors named in the will would have, and their acts are as effectual for all purposes. Their letters must be signed by the clerk of the court, and bear the seal of the court.

ARTICLE II.

FORM OF LETTERS.

Sec. 52. *Form of letters testamentary.*
Sec. 53. *Form of letters with will annexed.*
Sec. 54. *Form of letters of administration.*

Sec. 52. Letters testamentary must be substantially in the following form:

"*Territory of Montana, County of* ———:

"The last will of A B, deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ———, C D, who is named therein, is hereby appointed executor.

"Witness, G H, clerk of said county, with the seal of said court affixed, this the —— day of ——, A. D. 18—.

"By order of the court.

[L. S.] "G H, *Clerk.*"

SEC. 53. Letters of administration with the will annexed must be substantially in the following form:

"*Territory of Montana, County of* ———:

"The last will of A B, deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ———, and there being no executor named in said will (or as the case may be), C D is hereby appointed administrator with the will annexed.

"Witness, G H, clerk of said court, with the seal thereof affixed, this the —— day of ——, A.D. 18—.

"By order of the court.

[L. S.] "G H, *Clerk.*"

SEC. 54. Letters of administration must be signed by the clerk, under the seal of the court, and substantially in the following form:

"*Territory of Montana, County of* ———:

"C D is hereby appointed administrator of the estate of A B, deceased.

"Witness, G H, clerk of the probate court of said county, with seal thereof affixed, this the —— day of ——, A. D. 18—.

"By order of the court.

[L. S.] "G H, *Clerk.*"

ARTICLE III.

LETTERS OF ADMINISTRATION—TO WHOM AND THE ORDER IN WHICH GRANTED.

Sec. 55. *To whom granted and who entitled to.*
Sec. 56. *Preference where persons equally entitled.*
Sec. 57. *When court to exercise its discretion in appointing.*
Sec. 58. *Letters granted to guardian of minor.*
Sec. 59. *Who incompetent to serve.*
Sec. 60. *Marriage disqualifies a woman.*

SEC. 55. Administrators of the estate of a person dying intestate, must be granted to some one or more of the persons hereinafter mentioned, who are respectively entitled thereto, in the following order:

First. The surviving husband or wife, or some competent person, whom he or she may request to have appointed.

Second. The children.

Third. The father and mother.

Fourth. The brothers.

Fifth. The sisters.

Sixth. The grandchildren.

Seventh. The next of kin entitled to share in distribution of the estate.

Eighth. The creditors.

Ninth. The public administrator.

Tenth. Any person legally competent.

If the decedent was a member of a co-partnership at the time of his death, the surviving partner must in no instance be appointed administrator of the estate; and, *provided further*, that no person who is not a resident of this Territory shall be appointed administrator.

SEC. 56. Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole blood to those of the half blood.

SEC. 57. When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters, the court may, in its discretion, at the request of another creditor, grant letters to any other person legally competent.

SEC. 58. If any person entitled to administration is a minor, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court.

SEC. 59. No person is competent to serve as administrator or administratrix, who, when appointed, is:

First. Under the age of majority.

Second. Convicted of an infamous crime.

Third. Adjudged by the court to be incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

SEC. 60. A married woman must not be appointed administratrix. When an unmarried woman appointed administratrix marries, her authority is extinguished.

ARTICLE IV.

PETITION FOR LETTERS AND ACTION THEREON.

Sec. 61. *Requisites of petition; when subsequent proceedings not void if petition not perfect.*
Sec. 62. *Letters may be granted at regular or special term.*
Sec. 63. *Notice of hearing application.*
Sec. 64. *On what grounds petition contested and counter petition.*
Sec. 65. *Order of proceeding on the hearing.*
Sec. 66. *Conclusive evidence of notice.*
Sec. 67. *Upon failure of parties having better right to apply, letters must be granted to any applicant.*
Sec. 68. *What must be shown before letters be granted.*
Sec. 69. *Letters granted to any one upon request of person entitled.*

SEC. 61. Petitions for letters of administration must be in writing, signed by the applicant, or his attorney, and filed with the clerk of the court, stating the facts, to give the court jurisdiction of the case, and when known to the applicant, he must state the names, ages, and residence of the heirs of the decedent, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and afterwards proved in the course of administration, the decree or order of administration, and subsequent proceedings, are not void for want of such jurisdictional averments.

SEC. 62. Letters of administration may be granted at a regular term of court, or at a special term appointed by the judge for the hearing of the application.

SEC. 63. When a petittion praying for letters of administration is filed, the clerk must give notice thereof by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant, and term of court at which the application will be heard. Such notice must be given at least ten days before the hearing.

SEC. 64. Any person interested may contest the petition by filing written opposition thereto on the ground of incompetency of the applicant, or may assert his own right to the administration, and pray that letters may be issued to himself. In the latter case the contestant must file a petition and give the notice required for the original petition, and the court must hear the two petitions together.

SEC. 65. On the hearing, it being first proved that notice has been given as herein required, the court must hear the allegations and proofs of the parties, and order the issuing of letters of administration to the party best entitled thereto.

SEC. 66. An entry in the minutes of the court that the required proof was made and notice given shall be conclusive evidence of the fact of such notice.

SEC. 67. Letters of administration must be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such person fail to appear and claim the issuing of letters to himself.

SEC. 68. Before letters of administration are granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate must be proved by the testimony of the applicant or others; and the court may also examine any other person concerning the time, place and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left a will, and may compel any person to attend as a witness for that purpose.

SEC. 69. Administration may be granted to any one or more competent persons, although not entitled to the same, at the written request of the person entitled, filed in court.

ARTICLE V.

REVOCATION OF LETTERS AND PROCEEDINGS THEREFOR.

Sec. 70. *Letters revoked on petition of relative therefor.*
Sec. 71. *Citation to administrator in such case.*
Sec. 72. *Hearing and duty of court.*
Sec. 73. *May be revoked on petition of husband or wife.*

SEC. 70. When letters of administration have been granted to any person other than the surviving husband or wife, child, father, mother, brother, or sister of the intestate, any one of them may obtain the revocation of the letters, and be entitled to the administration, by presenting to the probate court a petition praying the revocation, and that letters of administration may be issued to him.

SEC. 71. When such petition is filed, the clerk must, in addition to the notice provided in section 57, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

SEC. 72. At the time appointed, the citation having been duly served and returned, the court must proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he is competent, letters of administration must be granted to him, and the letters of the former administrator revoked.

SEC. 73. The surviving husband or wife, when letters of administration have been granted to a child, father, brother, or sister of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his prior right, and obtain letters of administration, and have the letters before granted revoked in the manner prescribed in the three preceding sections.

ARTICLE VI.

EXECUTORS AND ADMINISTRATORS—OATH AND BOND OF.

Sec. 74. *Oath of administrator or executor; to be recorded.*
Sec. 75. *Bond of administrator or executor.*
Sec. 76. *Additional bond upon sale of real estate.*
Sec. 77. *Condition of bond.*
Sec. 78. *When more than one, each must give bond.*
Sec. 79. *Bond not void until whole penalty is exhausted.*
Sec. 80. *Justification of sureties.*
Sec. 81. *Before approving bond, judge may examine sureties.*
Sec. 82. *When sufficient security not given, right of party to administer ceases.*
Sec. 83. *Provisions when will exempts executor from giving bond.*
Sec. 84. *Any party interested may petition for further security.*
Sec. 85. *Judge may order citation to issue in such case.*
Sec. 86. *Hearing and order for further security.*
Sec. 87. *Upon failure, letters revoked.*
Sec. 88. *Judge may suspend powers of executor or administrator.*
Sec. 89. *Judge on his own motion may cite, and require further security.*

Sec. 90. *How surety may be released from future liability.*
Sec. 91. *Order releasing surety.*
Sec. 92. *Letters revoked upon failure to give new sureties.*
Sec. 93. *Applications authorized by preceding nine sections may be made in vacation.*

SEC. 74. Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath before some officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator, which oath must be attached to the letters.

All letters testamentary and of administration issued to, and all bonds executed by, executors or administrators, with the affidavits and certificates thereon, must be forthwith recorded by the clerk of the court having jurisdiction of the estates in books to be kept by him in his office for that purpose.

SEC. 75. Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the Territory of Montana, with two or more sufficient sureties, to be approved by the probate judge. The penalty must not be less than twice the value of the personal property and twice the probable value of the annual rents, profits and issues of the real property belonging to the estate, which values must be ascertained by the probate judge by examining, on oath, the party applying, and any other persons.

SEC. 76. The probate judge must require an additional bond whenever the sale of any real estate belonging to an estate is ordered by him; but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given before receiving letters, or of any bond given in place thereof, is equal to twice the value of the personal property remaining in, or that will come into, the possession of the executor or administrator, including the annual rents, profits, and issues of real estate, and twice the probable amount to be realized on the sale of the real estate to be sold.

SEC. 77. The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

SEC. 78. When two or more persons are appointed executors or administrators, the probate judge must require and take a separate bond from each of them.

SEC. 79. The bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved in his own name, until the whole penalty is exhausted.

SEC. 80. In all cases where bonds or undertakings are required to be given, under this title, the sureties must justify thereon, in the same manner and in like amounts, as required in cases of appeal to the supreme court in the civil practice act; and the certificate thereof must be attached to, and filed and recorded with, the bond or undertaking.

All such bonds and undertakings must be approved by the probate judge, before being filed or recorded.

SEC. 81. Before any probate judge approves any bond required under this title, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue requiring such sureties to appear before him, at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause a notice to be issued to the executor or administrator, requiring his appearance on the return of the citation; and on its return he may examine the sureties, and such witnesses as may be produced, touching the property of the sureties and its value; and if, upon such examination, he is satisfied that the bond is insufficient, he must require sufficient additional security.

SEC. 82. If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, must be appointed to the administration.

SEC. 83. When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue, and sales of real estate be made and confirmed, without any bond, unless the court, for good cause, require one to be executed; but the executor may at any time afterwards, if it appear from any cause necessary or proper, be required to file a bond as in other cases.

SEC. 84. Any person interested in an estate may, by verified petition, represent to the probate judge that the sureties of the executor or administrator thereof have become or are becoming insolvent, or that they have removed or are about to remove from the Territory, or, from any other cause, that the bond is insufficient, and ask that further security be required.

SEC. 85. If the probate judge is satisfied that the matter requires investigation, a citation must be issued to the executor or administrator, requiring him to appear at a time and place to be therein specified, to show cause why he should not give further security. The citation must be served personally on the executor or administrator, at least five days before the return day. If he has absconded, or cannot be found, it may be served by leaving a copy of it at his place of residence, or by such publication as the court or judge may order.

SEC. 86. On the return of the citation, or at such other time as the judge may appoint, he must proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time—not less than five days.

SEC. 87. If the executor or administrator neglects to comply with the order within the time prescribed, the judge must, by order, revoke his letters, and his authority must thereupon cease.

SEC. 88. When a petition is presented, praying that an executor or administrator be required to give further security, or to give bond, if, by the terms of the will no bond was originally required, and it is alleged, on oath, that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

SEC. 89. When it comes to his knowledge that the bond of any executor or administrator is from any cause insufficient, the probate judge, without any application, must cause him to be cited to appear and show cause why he should not give further security; and must proceed thereon as upon the application of any person interested.

SEC. 90. Where a surety of any executor or administrator desires to be released from responsibility on account of future acts, he may make application to the probate court or judge for relief. The court or judge must cause a citation to the executor or administrator to be issued, and served personally, requiring him to appear at a time and place to be therein specified, and to give other security; if he has absconded, left, or removed from the Territory, or if he cannot be found after due diligence and inquiry, service may be made as provided in section 85.

SEC. 91. If new sureties be given to the satisfaction of the judge, he may thereupon make an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default, or misconduct of the executor or administrator.

SEC. 92. If the executor or administrator neglects or refuses to give new sureties, to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, unless the surety making the application shall consent to a longer extension of time, the court or judge, must, by order, revoke his letters.

SEC. 93. The applications authorized by the nine preceding sections of this chapter may be heard and determined out of term time.

All orders made therein must be entered upon the minutes of the court.

ARTICLE VII.

SPECIAL ADMINISTRATORS AND THEIR POWERS AND DUTIES.

Sec. 94. *Liability of principal and surety.*
Sec. 95. *In what cases special administrators appointed, and their powers.*
Sec. 96. *Order appointing and letters of.*
Sec. 97. *Judge to prefer those entitled, but no appeal allowed.*
Sec. 98. *Bond, oath, and letters of special administrator.*
Sec. 99. *Duties, powers, and liability of special administrator.*
Sec. 100. *When his powers and duties cease.*
Sec. 101. *Must render an account on oath.*

SEC. 94. The liability of principal and sureties upon the bond of any executor, administrator, or guardian, is in all cases to pay in the kind of money or currency in which the principal is legally liable.

SEC. 95. When there is delay in granting letters testamentary or of administration, from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an administrator or executor dies or is suspended or removed, the probate judge must appoint a special administrator to collect and take charge of the estate of the decedent, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate, or he may direct the public administrator of his county to take charge of the estate.

SEC. 96. The appointment may be made out of term time, and without notice, and must be made by entry upon the minutes of the court specifying the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk must issue letters of administration to such person in conformity with the order.

SEC. 97. In making the appointment of a special administrator, the probate judge must give preference to the person entitled to letters testamentary or of administration, but no appeal must be allowed from the appointment.

SEC. 98. Before any letters issue to any special administrator, he must give bond in such sum as the probate judge may direct, with sureties to the satisfaction of the judge, conditioned for the faithful performance of his duties; and he must take the usual oath, and have the same endorsed on his letters.

SEC. 99. The special administrator must collect and preserve for the executor or administrator all the goods, chattels, debts, and effects of the decedent, all incomes, rents, issues, and profits, claims and demands of the estate; must take the charge and management of, enter upon and preserve from any damage, waste, and injury, the real estate, and for any such and all necessary purposes, may commence and maintain or defend suits and other legal proceedings, as an administrator; he may sell such perishable property as the probate court may order to be sold, and exercise such other powers as are conferred upon him by his appointment; but in no case is he liable to an action by any creditor on a claim against the decedent.

SEC. 100. When letters testamentary or of administration on the estate of the decedent have been granted, the powers of the special administrator cease, and he must forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

SEC. 101. The special administrator must render an account, on oath, of his proceedings, in like manner as other administrators are required to do.

ARTICLE VIII.

WILLS FOUND AFTER LETTERS OF ADMINISTRATION GRANTED, AND MISCELLANEOUS PROVISIONS.

Sec. 102. *Letters revoked if will found after granting.*
Sec. 103. *In such case, power of executor or administrator with will annexed.*
Sec. 104. *Remaining executor or administrator to complete when colleague becomes incapacitated.*
Sec. 105. *When all become disqualified new ones appointed.*
Sec. 106. *Administrator or executor may resign or be removed, they nor their sureties not discharged.*
Sec. 107. *Acts of, valid and binding until revocation of letters.*
Sec. 108. *Transcript of record the same effect in evidence as letters.*

SEC. 102. If, after granting letters of administration on the ground of intestacy, a will of the decedent is duly proved and allowed by the court, the letters of administration must be revoked, and the powers of administrator shall cease, and he must render an account of his administration within such time as the court shall direct.

SEC. 103. In such case, the executor, or the administrator with the will annexed, is entitled to demand, sue for, recover and collect all the rights, goods, chattels, debts, and effects of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

SEC. 104. In case any one of the several executors or administrators, to whom letters are granted, dies, becomes lunatic, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust, or in case the letters testamentary or of administration are revoked or annulled with respect to any one executor or administrator, the remaining executor or administrator must proceed to complete the execution of the will or administration.

SEC. 105. If all such executors or administrators die or become incapable, or the power and authority of all of them is revoked, the probate court must issue letters of administration with the will annexed, or otherwise, to the widow, or next of kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed must give bond in the like penalty, with like sureties and conditions, as hereinbefore required of administrators, and shall have the like power and authority.

SEC. 106. Any executor or administrator may, at any time, by writing filed in the probate court, resign his appointment, having first settled his accounts, and delivered up all the estate to the person whom the court shall appoint to receive the same. If, however, by reason of any delay in such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate, or the right of those interested therein, require it, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to orignal letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released, or affected by such appointment or resignation.

SEC. 107. All acts of an executor or administrator, as such, before the revocation of his letters testamentary, or of administration, are as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

SEC. 108. A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of his court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

ARTICLE IX.

DISQUALIFIED JUDGES AND TRANSFERS OF ADMINISTRATORS.

Sec. 109. *Court disqualified to grant letters when judge interested in estate*
Sec. 110. *In which case proceedings transferred to adjoining county.*
Sec. 111. *Transfer not to affect rights of any persons entitled to letters. When another judge is elected, case may be sent back.*
Sec. 112. *Hearing of motion and proceedings when ordered back.*

Sec. 109. No probate court shall admit to probate any will, or grant letters testamentary or of administration, in any case where the judge thereof is interested as next of kin to the decedent, or as a legatee or divisee under the will, or when he is named as executor or trustee in the will, or as a witness thereto, or is in any other manner interested or disqualified from acting.

Sec. 110. When a petition is filed in the probate court, praying for admission to probate of a will, or for granting letters testamentary or of administration, or when proceedings are pending in the probate court for the settlement of an estate, and the presiding judge of the court is disqualified to act from any cause, upon his own or the motion of any person interested in the estate, he must make an order transferring the proceeding to the probate court of an adjoining county, and the clerk of the court ordering the transfer must transmit to the clerk of the court to which the proceeding is ordered to be transferred, a certified copy of the order, and all papers on file in his office in the proceeding; and thereafter the probate court to which the proceeding is transferred shall exercise the same authority and jurisdiction over the estate, and all matters relating to the administration thereof, as if it had original jurisdiction of the estate.

Sec. 111. The transfer of a proceeding from one court to another, as provided for in the preceding section, shall not affect the right of any person to letters testamentary or of administration on the estate transferred, but the same persons are entitled to letters testamentary or of administration on the estate, in the order hereinbefore provided. If, before the administration is closed of any estate so transferred as herein provided, another person is elected or appointed and qualified as probate judge of the county wherein such proceeding was orginally commenced, who is not disqualified to act in the settlement of the estate, and the causes for which the proceeding was transferred no longer exist, any person interested in the estate may have the proceeding returned to the court from which it was originally transferred, by filing a petition setting forth these facts, and moving the court therefor.

Sec' 112. On hearing the motion, if the facts required by the preceding section to be set out in the petition are satisfactorily shown, and it further appears to the court that the convenience of parties interested would be promoted by such change, the judge must make an order transferring the proceeding back to the probate court where it was originally commenced; and the clerk of the court ordering the transfer must transmit to the clerk of the court in which the proceeding was originally commenced, a certified copy of the order, and all the original papers on file in his office in the proceeding, and the court where the proceeding was originally commenced shall thereafter have jurisdiction and power to make all necessary orders and decrees to close up the administration of the estate.

ARTICLE X.

REMOVAL AND SUSPENSION IN CERTAIN CASES.

Sec. 113. *Causes for which powers of administrator or executor may be suspended.*
Sec. 114. *To be cited to show cause and may be removed.*
Sec. 115. *Hearing and pleadings in such case.*
Sec. 116. *Concealed or absent administrator or executor may be served by publication.*
Sec. 117. *Attendance compelled by attachment, and examined under oath.*

SEC. 113. Whenever the probate judge has reason to believe, from his own knowledge or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle, the property of the estate committed to his charge, or has committed, or is about to commit, a fraud upon the estate, or is incompetent to act, or has permanently removed from the Territory, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator until the matter is investigated.

SEC. 114. When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court is satisfied that there exists cause for his removal, his letters must be revoked, and letters of administration granted anew, as the case may require.

SEC. 115. At the hearing any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed, to which the executor or administrator may demur or answer, as hereinbefore provided. The issues raised must be heard and determined by the court.

SEC. 116. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the Territory, notice may be given him of the pendency of the proceedings, by publication, in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

SEC. 117. In the proceedings authorized by the preceding sections of this article for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

CHAPTER IV.

ARTICLE I.

INVENTORY, APPRAISEMENT, AND POSSESSION OF ESTATE.

Sec. 118. *Inventory and appraisement to be made.*
Sec. 119. *Appointment, compensation, and account of appraisers.*
Sec. 120. *Oath and duties, contents of inventory.*
Sec. 121. *Inventory must contain account of moneys.*
Sec. 122. *Debt of executor or administrator to be accounted for.*
Sec. 123. *Bequest of debt does not discharge it, how treated.*
Sec. 124. *Inventory; how signed and verified.*
Sec. 125. *For neglect to return inventory, letters may be revoked; liability of bond.*
Sec. 126. *Additional inventory of after discovered property.*
Sec. 127. *Duties as to care and possession of estate.*
Sec. 128. *When possession of real estate to be delivered to heirs.*

Sec. 118. Every executor or administrator must make and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the decedent, including the homestead, if any, which has come to his possession or knowledge.

Sec. 119. To make the appraisement, the probate judge or court must appoint three disinterested persons (any two of whom may act), who are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, to be allowed by the court or judge. The appraisers must, with the inventory, file a verified account of their services and disbursements. If only one day's services are charged, the bill need not be sworn to.

If any part of the estate is in any other county than that in which letters are issued, appraisers thereof may be appointed, either by the probate judge having jurisdiction of the estate or by the probate judge of such other county, on request of the judge having jurisdiction.

Sec. 120. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, must take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property which is exhibited to them, according to the best of their knowledge and ability. They must then proceed to estimate and appraise the property. Each article must be set down separately, with the value thereof in dollars and cents, in figures, opposite the articles respectively. The inventory must contain all the estate of the decedent, real and personal, a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon (if any), with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt, interest, or security. The inventory must show, so far as the same can be ascertained by the executor or the administrator, what portion of the property is community property, and what portion is the separate property of the decedent.

Sec. 121. The inventory must also contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator; and if none, the fact must be so stated in the inventory. If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned as in other cases.

Sec. 122. The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him, but the claim must be included in the inventory; and the executor is liable for the same as for so much money in his hands when the debt or demand becomes due.

Sec. 123. The discharge or bequest in a will of any debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent, but is a specific bequest of the debt or demand. It must be included in the inventory, and, if necessary, applied in the payment of his debts; if not necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

Sec. 124. The inventory must be signed by the appraisers, and the executor or administrator must take and subscribe an oath, before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be endorsed upon or annexed to the inventory.

Sec. 125. If an executor or administrator neglects or refuses to return the inventory within the time prescribed, or within such further time, not exceeding two months, which the court or judge shall, for reasonable cause, allow, the court may, upon notice, revoke the letters testamentary or of administration, and the executor or administrator is liable on his bond for any injury to the estate, or any person interested therein, arising from such failure.

Sec. 126. Whenever property not mentioned in an inventory that is made and filed comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed in this article, and an inventory thereof to be returned within two months after the discovery; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

Sec. 127. The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and profits of the real estate, until the estate is settled, or until delivered over by order of the probate court to the heirs or devisees; and must keep in good tenantable repair all houses, buildings, and fixtures thereon, which are under his control.

The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate, or for the purpose of quieting the title, to the same, against any one except the executor or administrator.

Sec. 128. Unless it satisfactorily appears to the probate court that the rents, issues, and profits of the real estate for a longer period are necessary to be received by the executor or administrator, wherewith to pay the debts of the decedent, or that it will probably be necessary to sell the real estate for the payment of such debts, at the end of ten months from the first publication of the notice to creditors, the court must direct the executor or administrator to deliver possession of all the real estate to the heirs at law or devisees.

ARTICLE II.

EMBEZZLEMENT AND SURRENDER OF PROPERTY OF THE ESTATE.

Sec. 129. *Action to recover embezzled property.*
Sec. 130. *Embezzler to be cited to appear and be examined.*
Sec. 131. *May be arrested and imprisoned if he refuse to appear or answer.*
Sec. 132. *Trustee may be cited to appear and answer and account.*

SEC. 129. If any person, before the granting of letters testamentary or of administration, embezzles or alienates any of the moneys, goods, chattels, or effects of a decedent, he is chargeable therewith, and liable to an action by the executor or administrator of the estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

SEC. 130. If any executor, administrator, or other person interested in the estate of a decedent, complains to the probate judge, on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of or tend to disclose the right, title, interest, or claim of the decedent to any real or personal estate, or any claim or demand, or any last will, the judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person is not in the county where letters have been granted, he may be cited and examined, either before the probate court of the county where he is found, or before the court issuing the citation. But if, in the latter case, he appears, and is found innocent, his necessary expenses must be allowed him out of the estate.

SEC. 131. If the person so cited refuse to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matter of the complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court, or is discharged according to law. If, upon such examination, it appears that he has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, tending to disclose the right, title, interest or claim of the decedent to any real or personal estate, claim, or demand, or any last will of the decedent, the probate court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the county jail, there to remain until the order is complied with, or he is discharged according to law. And all such interrogatories and answers must be in writing, signed by the party examined, and filed in the probate court.

The order for such disclosure made upon such examination is *prima facie* evidence of the right of such administrator to such property, in any action brought for the recovery thereof; and any judgment recovered therein must be for double the value of the property as assessed by the court or jury, or for return of the property, and damages in addition thereto equal to the value of such property.

In addition to the examination of the party, witnesses may be produced and examined on either side.

SEC. 132. The probate judge, upon the complaint, on oath, of an executor or administrator, may cite any person who has been entrusted with any part of the estate of the decedent, to appear before such court, and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

CHAPTER V.

ARTICLE I.

OF THE PROVISIONS FOR THE SUPPORT OF THE FAMILY.

Sec. 133. *Widow and children to remain in possession of homestead, &c.*
Sec. 134. *Property set apart for surviving husband or wife, &c.*
Sec. 135. *Additional allowance to the family.*
Sec. 136. *Allowance to family preferred to other charges.*
Sec. 137. *Property set apart apportioned among members of family,*
Sec. 138. *Estate not exceeding in value fifteen hundred dollars goes to widow and children; proceedings when it does not exceed three thousand dollars.*
Sec. 139. *Disposition of property set apart, when widow has other means.*

SEC. 133. When a person dies, leaving a widow or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent; and are also entitled to a reasonable provision for their support, to be allowed by the probate judge.

SEC. 134. Upon the return of the inventory, or at any subsequent time during the administration, the court or probate judge may, on his own motion or on petition therefor, set apart for the use of the surviving husband or wife or the minor children of the decedent, all property exempt from execution, including the homestead selected, designated, and recorded. If none has been selected, designated, and recorded, the judge of the court must select, designate, set apart, and cause to be recorded a homestead, for the use of the persons hereinbefore named, in the manner provided in Article II of this chapter, out of the real estate belonging to the decedent.

SEC. 135. If the amount set apart be insufficient for the support of the widow and children, or either, the probate court or judge must make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration.

SEC. 136. Any allowance made by the court or judge in accordance with the provisions of this article, must be paid in preference to all other charges, except funeral charges and expenses of administration; and any such allowance, whenever made, may, in the discretion of the court or judge, take effect from the death of the decedent.

SEC. 137. When property is set apart for the use of the family, in accordance with the provisions of this chapter, if the decedent left a widow or surviving husband and no minor child, such property is the property of the widow or surviving husband. If the decedent left also a minor child or children, the one-half of such property shall belong to the widow or surviving husband, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow or surviving husband, the whole belongs to the minor child or children.

SEC. 138. If, on the return of the inventory of the estate of an intestate, it appears that the value of the whole estate does not exceed the sum of fifteen hundred dollars, the probate court, by a decree for that purpose, must assign for the use and support of the widow and minor child or children, if there be a widow or minor child, and if no widow, then for the children, if there are any, the whole of the estate, after the payment of the expenses of his last illness, funeral charges, and expenses of the administration, and there must be no further proceedings in the administration, unless further estate be discovered; and when it so appears that the value of the whole estate does not exceed the sum of three thousand dollars, it is in the discretion of the probate court to dispense with the regular proceedings, or any part thereof, prescribed in this Title, and there must be had a summary administration of the estate, and an order of distribution thereof at the end of six months after the issuing of letters. The notice to creditors must be given to present their claims within four months after the first publication of such notice, and those not so presented are barred as in other cases.

SEC. 139. If the widow has a maintenance derived from her own property, equal to the portion set apart to her by the preceding sections of this article, the whole property so set apart, other than her half of the homestead, must go to the minor children.

ARTICLE II.

OF THE HOMESTEAD.

Sec. 140. *In whom vested on death of husband or wife; not subject to debts.*
Sec. 141. *Liens on homestead; how satisfied.*
Sec. 142. *Proceedings when homestead exceeds $2,500.*
Sec. 143. *Majority and minority reports of appraisers.*
Sec. 144. *Hearing of report and notice thereof; new appraisers.*
Sec. 145. *Costs; Purchasers succeed to rights of their predecessors.*
Sec. 146. *Certified copies of final orders to be recorded.*

SEC. 140. If the homestead selected by the husband and wife, or either of them, during their coverture, and recorded while both were living, was selected, it vests, on the death of the husband or wife, absolutely in the survivor. If the homestead was selected from the separate property of either husband or wife, it vests, on the death of the person from whose property it was selected, in his or her heirs, subject to the power of the probate court to assign it for a limited period to the family of the decedent. In either case it is not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them, previous to or at the time of the death of such husband or wife, except as provided in the civil code.

SEC. 141. If the homestead, selected and recorded prior to the death of the decedent, be returned in the inventory appraised at not exceeding two thousand five hundred dollars in value, or was previously appraised as provided in the civil code, and such appraised value did not exceed that sum, the probate court must, by order, set it off to the persons in whom title is vested by the preceding section. If there be subsisting liens or incumbrances on the homestead, the claims secured thereby must be presented and allowed as other claims against the estate. If the funds of the estate be adequate to pay all claims allowed against the estate, the claims so secured must be paid out of such funds; if the funds of the estate be not sufficient for that purpose, the claims so secured shall be paid proportionally with other claims allowed, and the liens or incumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after such payment.

SEC. 142. If the homestead, as selected and recorded be returned in the inventory appraised at more than two thousand five hundred dollars, the appraisers must, before they make their return, ascertain and appraise the value of the homestead at the time the same was selected, and if such value exceed two thousand five hundred dollars, or if the homestead was appraised as provided in the civil code, and such appraised value exceeded that sum, the appraisers must determine whether the premises can be divided without any material injury, and if they find that they can be thus divided, they must admeasure and set apart to the parties entitled thereto such portion of the premises, including the dwelling house, as will amount in value to the sum of two thousand five hundred dollars, and make report thereof, giving the metes, bounds, and full description of the portion set apart as a homestead. If the appraisers find that the premises exceeded in value, at the time of their selection, the sum of two thousand five hundred dollars, and that they cannot be divided without material injury, they must report such finding, and thereafter the court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto.

SEC. 143. Any two of the appraisers concurring may discharge the duties imposed upon the three, and make the report. A dissenting report may be made by the third appraiser. The report must state fully the acts of the appraisers. Both reports may be heard and considered by the court in determining a confirmation or rejection of the majority report, but the minority report must in no case be confirmed.

SEC. 144. When the report of the appraisers is filed the court must set a day for hearing any objections thereto from any one interested in the estate. Notice of the hearing must be given for such time and in such manner as the court may direct. If the court be satisfied that the report is correct, it must be confirmed, otherwise rejected. In case the report is rejected, the court may appoint new appraisers to examine and report upon the homestead, and similar proceedings may be had for the confirmation or rejection of their report as upon the first report.

Sec. 145. The costs of all proceedings in the probate court provided for in this chapter, must be paid by the estate, as expenses of administration. Persons succeeding, by purchase or otherwise, to the interests, rights, and title of successors to homesteads, or to the right to have homesteads set apart to them, as in this chapter provided, have all the rights and benefits conferred by law on the persons whose interests and rights they acquire.

Sec. 146. A certified copy of every final order made in pursuance of this article, by which a report is confirmed, property assigned, or sale confirmed, must be recorded in the office of the recorded of the county where the homestead property is situated.

CHAPTER VI.

ARTICLE I.

OF CLAIMS AGAINST THE ESTATE.

Sec. 147. *Notice to creditors must be published.*
Sec. 148. *Time expressed in the notice.*
Sec. 149. *Affidavit and decree of due publication and posting.*
Sec. 150. *In what time claims must be presented or be barred.*
Sec. 151. *Affidavit and proof of claim.*
Sec. 152. *Proceedings when the judge presents a claim.*
Sec. 153. *When claim is presented how allowed and endorsed.*
Sec. 154. *Claim allowed and proved must be filed, and must be accompanied by copy of instrument on which it is founded.*
Sec. 155. *Limitation of action on rejected claim.*
Sec. 156. *No claim allowed when barred; judge may examine claimant on oath.*
Sec. 157. *No action can be maintained until after presentation.*
Sec. 158. *Time not included in time limited.*
Sec. 159. *Claim in pending action must be presented.*
Sec. 160. *Judge may allow part of claim.*
Sec. 161. *Effect of judgment against administrator.*
Sec. 162. *Of judgment, execution, and redemption.*
Sec. 163. *Judgment no lien on real estate.*
Sec. 164. *By agreement claim may be referred to a disinterested party.*
Sec. 165. *Proceedings and report of such referee; new referee.*
Sec. 166. *Liability of executor or administrator for costs.*
Sec. 167. *Proceedings on claim of executor or administrator.*
Sec. 168. *If executor or administrator neglects to give notice to creditors.*
Sec. 169. *List of claims against the estate.*
Sec. 170. *Interest on interest-bearing claims may be paid.*

Sec. 147. Every executor or administrator must, immediately after his appointment, cause to be published in some newspaper of the county, if there be one (if not, then in such newspaper as may be designated by the court), a notice to the creditors of the deceased, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice. Such notice must be published as often as the judge or court shall direct, but not less than once a week for four successive weeks; the court or judge may also direct additional notice by publication or posting. In case such executor or administrator resign or is removed before the time expressed in the notice, his successor must give notice for only the unexpired time allowed for such presentation.

SEC. 148. The time expressed in the notice must be ten months after its first publication when the estate exceeds in value the sum of ten thousand dollars, and four months when it does not.

SEC. 149. After notice is given as required by the preceding section, a copy thereof, with the affidavit of due publication, or of publication and posting, must be filed; and upon such affidavit or other testimony to the satisfaction of the court, an order or decree showing that due notice to the creditors has been given, and directing that such order or decree be entered in the minutes and recorded, must be made by the court.

SEC. 150. If a claim arising upon a contract heretofore made be no presented within the time limited in the notice, it is barred forever, except as follows: If it be not then due, or if it be contingent, it may be presented within one month after it becomes due or absolute; if it be made to appear by the affidavit of the claimant, to the satisfactisfaction of the executor or administrator and the probate judge, that the claimant had no notice, as provided in this chapter, by reason of being out of the Territory, it may be presented any time before a decree of distribution is entered. A claim for a deficiency remaining unpaid after a sale of property of the estate mortgaged or pledged must be presented within one month after such deficiency is ascertained. All claims arising upon contracts hereafter made, whether the same be due, not due, or contingent, must be presented within the time limited in the notice; and any claim not so presented is barred forever: *Provided, however,* That when it is made to appear by the affidavit of the claimant, to the satisfaction of the executor or administrator and the probate judge, that the claimant had no notice, as provided in this chapter, by reason of being out of the Territory, it may be presented at any time before a decree of distribution is entered.

SEC. 151. Every claim which is due when presented to the administrator must be supported by the affidavit of the claimant, or some one in his behalf, and that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no set-offs to the same to the knowledge of the claimant or affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reasons why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate be insolvent, no greater rate of interest shall be allowed upon any claim after the first publication of notice to creditors than is allowed on judgments obtained in the district court.

SEC. 152. Any probate judge may present a claim against the estate of a decedent for allowance, to the executor or administrator thereof; and if the executor or administrator allows the claim, he must, in writing, designate some probate judge of an adjoining county, who, upon the presentation of such claim to him, is vested with the same power to allow or reject it as he would have if the will had been proved or administration granted in his own county; and the probate judge presenting such claim, in case of its rejection by the executor or administrator, or by such probate judge as shall have acted upon it, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

SEC. 153. When a claim, accompanied by the affidavit required in this chapter, is presented to the executor or administrator, he must endorse thereon his allowance or rejection, with the day and date thereof. If he allows the claim, it must be presented to the probate judge for his approval, who must, in the same manner, endorse upon it his allowance or rejection. If the executor or administrator or the judge refuse or neglect to endorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect is equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary, under seal, is *prima facie* evidence of such presentation and rejection. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time, though acted upon by the executor or administrator and by the judge after the expiration of such time. If the claim be payable in a particular kind of money or currency, it shall, if allowed, be payable only in such money or currency.

SEC. 154. Every claim allowed by the executor or administrator and approved by the probate judge, or a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim is founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim or any part thereof is secured by a mortgage or other lien, which has been recorded in the office of the recorder of the county in which the land affected by it lies, in which case it is sufficient to describe the mortgage or lien and refer to the date, volume, and page of its record.

If in any case the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in court, he may withdraw the same when a copy thereof has been already or is then attached to his claim. A brief description of the claim filed must be entered by the clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest and date of allowance.

SEC. 155. When a claim is rejected, either by the executor or administrator or the probate judge, the holder must bring suit in the proper court against the executor or administrator, within three months after date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred.

SEC. 156. No claim must be allowed by the executor or administrator, or by the probate judge, which is barred by the statute of limitations. When a claim is presented to the probate judge for his allowance, he may, in his discretion, examine the claimant and others, on oath, and hear any other legal evidence touching the validity of the claim.

SEC. 157. No holder of any claim against an estate shall maintain any action thereon, unless the claim is first presented to the executor or administrator.

SEC. 158. The time during which there shall be a vacancy in the administration must not be included in any limitations herein prescribed.

SEC. 159. If an action is pending against the decedent at the time of his death, the plaintiff must in like manner present his claim to the executor or administrator, for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentation required.

SEC. 160. Whenever any claim is presented to an executor or administrator, or to the probate judge, and he is willing to allow the same in part, he must state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action therefor brought against the executor or administrator, unless he recovers a greater amount than that offered to be allowed.

SEC. 161. A judgment rendered against an executor or administrator upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge, and the judgment must be that the executor or administrator pay in due course of administration the amount ascertained to be due. A certified transcript of the judgment must be filed in the probate court. No execution must issue upon such judgment, nor shall it create any lien upon the property of the estate or give to the judgment creditor any priority of payment.

SEC. 162. When judgment has been rendered for or against the testator (or) intestate in his lifetime, no execution shall issue thereon after his death, except as provided in section 306 of the Code of Civil Procedure. A judgment against the decedent for the recovery of money must be presented to the executor or administrator, like any other claim. If execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof; and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real estate of the decedent from any sale under foreclosure or execution, in like manner and with like effect as if the judgment debtor were still living.

Sec. 163. A judgment rendered against a decedent, dying after a verdict or decision on an issue of fact, but before judgment is rendered thereon, is not a lien on the real property of the decedent, but is payable in due course of administration.

Sec. 164. If the executor or administrator doubts the correctness of any claim presented to him, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the probate judge; upon filing the agreement and approval of the probate judge in the office of the clerk of the district court for the county in which the letters testamentary or of administration were granted, the clerk must, either in vacation or in term, enter a minute of the order referring the matter in controversy to the person so selected; or, if the parties consent, a reference may be had to the probate court, and the report of the referee, if confirmed, establishes or rejects the claim the same as if it had been allowed or rejected by the executor or administrator and the probate judge.

Sec. 165. The referee must hear and determine the matter and make his report thereon to the court in which his appointment is entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation, and subject to the same control, as in other cases of reference. The court may remove the referee, appoint another in his place, set aside or confirm his report, and adjudge costs, as in actions against executors or administrators, and the judgment of the court thereon shall be as valid and effectual in all respects as if the same had been rendered in a suit commenced by ordinary process.

Sec. 166. When a judgment is recovered with costs against any executor or administrator, he shall be individually liable for such costs; but they must be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

Sec. 167. If the executor or administrator is a creditor of the decedent, his claim, duly authenticated by affidavits, must be presented for allowance or rejection to the probate judge, and its allowance by the judge is sufficient evidence of its correctness, and it must be paid as other claims, in due course of administration. If, however, the probate judge rejects the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the probate judge, who may appoint an attorney at the expense of the estate to defend the action. If the claimant recovers no judgment, he must pay all costs, including defendant's fees.

Sec. 168. If any executor or administrator neglects for two months after his appointment to give notice to creditors, as prescribed by this chapter, the court must revoke his letters, and appoint some other person in his stead, equally or the next in order entitled to the appointment.

Sec. 169. At the same term at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate which have been presented to him, if so required by the court; and from term to term thereafter he must present a statement of claims subsequently presented to him. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due, or will become due, and whether it was allowed or rejected by him.

SEC. 170. If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid. This section does not apply to existing debts, unless the creditor consent to accept the amount.

CHAPTER VII.

ARTICLE I.

SALES IN GENERAL.

Sec. 171. *Property of deceased liable for debts.*
Sec. 172. *Proceedings when money is borrowed for estate.*
Sec. 173. *Sales of property; order of court.*
Sec. 174. *Petition for order of sale.*
Sec. 175. *When estate insolvent or just sufficient to pay all claims, only one sale made.*

SEC. 171. All the property of a decedent shall be chargeable with the payment of the debts of the deceased, the expenses of administration, and the allowance to the family, except as otherwise provided in this code and in the civil code. And the said property, personal and real, may be sold as the court may direct, in the manner prescribed in this chapter. There shall be no priority as between personal and real property for the above purposes.

SEC. 172. In all cases the executor or administrator of an estate, instead of selling the property of the estate to pay the charges and demands against the same, may borrow money at the lowest rate of interest at which it may be had, and for such length of time the court may allow, to pay such claims, when it shall be made to appear to the court, by petition and evidence, that an immediate sale of the property of the estate will be detrimental to the heirs, devisees, legatees, or other persons having an interest therein; and in such case the estate shall be chargeable with the payment of such sum so borrowed and interest thereon. Such petition may be made by the executor or administrator, or by any one of the heirs of the deceased, or other person interested in the estate. Notice shall be given as follows: If by the executor or administrator, to all the heirs, devisees, legatees residing in the territory; and if by any heir, devisee, or legatee, to the administrator or executor, and to all other heirs, devisees and legatees residing in the Territory, which notice shall be given as notice to creditors by an executor or administrator is required by the provisions of this act.

SEC. 173. No sale of any property of an estate of a decedent is valid unless made under order of the probate court, except as otherwise provided in this chapter. All sales must be reported under oath, and confirmed by the probate court, before the title to the property sold passes.

SEC. 174. All petitions for orders of sale must be in writing, setting forth the facts showing the sale to be necessary, and, upon the hearing, any person interested in the estate may file his written objections, which must be heard and determined. A failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing the necessity be stated in the order directing the sale.

SEC. 175. When it appears to the court that the estate is insolvent, or that it will require a sale of all the property of the estate of every character, to pay the family allowance, expenses of administration, and debts, there need be but one petition filed, but one order of sale made, and but one sale had, except in the case of perishable property, which may be sold as provided in section 176. The probate court, when a petition for the sale of any property for any of the purposes herein named is presented, must inquire fully into the probable amount required to make all such payments, and if there be no more estate than sufficient to pay the same, may require but one proceeding for the sale of the entire estate. In such case the petition must set forth substantially the facts required by section 187.

ARTICLE II.

SALES OF PERSONAL PROPERTY.

Sec. 176. *Sale of perishable and other property to pay family allowance.*
Sec. 177. *Sale of part or whole of personal property.*
Sec. 178. *Interests in partnership and pledged property and choses in action may be sold.*
Sec. 179. *When property must be sold and the order in which sold.*
Sec. 180. *Public sale; real property sold in certain cases.*

SEC. 176. At any time after receiving letters the executor, administrator, or special administrator may apply to the court or judge, and obtain an order to sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The order for the sale may be made without notice, but the executor, administrator, or special administrator is responsible for the property, unless, after making a sworn return and on a proper showing, the court shall approve the sale.

SEC. 177. If claims against the estate have been allowed and a sale of property is necessary for their payment, or the expenses of administration, or for the payment of legacies, the executor or administrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notice of at least five days must be given of the hearing of the application, either by posting notices or by advertising. He may also make a similar application, either in vacation or term, from time to time, so long as any personal property remains in his hands and sale thereof is necessary. If it appear for the best interest of the estate, he may, at any time after filing the inventory, in like manner, and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, whether necessary to pay debts or not.

SEC. 178. Partnership interest, or interests belonging to any estate by virtue of any partnership formerly existing, interests in personal property pledged, and choses in action, may be sold in the same manner as other personal property, when it appears to be for the best interest of the estate. Before confirming the sale of any partnership interest, whether made to the surviving partner or to any other person, the court or judge must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner, if in the county and able to be present in court.

SEC. 179. If it appears that a sale is necessary for the payment of debts or the family allowance, or for the best interest of the estate and the persons interested in the property to be sold, whether it is or is not necessary to pay the debts or family allowance, the court or judge must order it to be made. In making orders and sales for the payment of debts or family allowance, such articles as are not necessary for the support and subsistence of the family of the decedent, or are not especially bequeathed, must be first sold, and the court or judge must so direct.

SEC. 180. The sale of personal property must be made at public auction, for such money or currency as the court may direct, and after public notice given for at least ten days, by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold, unless, for good reasons shown, the probate court or judge orders a private sale or a shorter notice. Public sales of such property must be made at the court house door, or at the residence of the decedent, or at some other public place, but no sale shall be made of any personal property which is not present at the time of sale, unless the court otherwise order. When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies, the executor or administrator may also sell any real as well as personal property of the estate, for that purpose, upon the order of the probate court; and an application for the sale of real property may also embrace the sale of personal property.

ARTICLE III.

SUMMARY SALES OF MINES AND MINING INTERESTS.

Sec. 181. *Mines and mining interests may be sold.*
Sec. 182. *Petition for order of sale.*
Sec. 183. *Order to show cause and service thereof.*
Sec. 184. *Hearing of petition and order of sale,*
Sec. 185. *Proceedings when order of sale made.*

Sec. 181. When it appears from the inventory of the estate of any decedent that his estate consists, in whole or in part, of mines or interests in mines, or of shares, interests, or stocks in a mining corporation, such mines, interests, stocks, or shares may be sold under the order of the probate court having jurisdiction of the estate, as hereinafter provided.

Sec. 182. The executor, administrator, or any heir at law or creditor of the estate, any partner or member of any mining company in which interests or shares are held or owned by the estate, may file in the probate court a petition, in writing, setting forth the general facts of the estate being then in due course of administration, and particularly describing the mine, interest, or shares, which it is desired to sell, and particularly the condition and situation of the mines or mining interests, or of the mining company or corporation in which such interests or shares are held, and the grounds upon which the sale is asked to be made.

Sec. 183. Upon the presentation of such petition the probate judge must make an order directing all persons interested to appear before him at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mines, mining interests, shares, or stocks, as are set forth in the petition and belonging to the estate. A copy of the order to show cause must be personally served on all persons interested in the estate at least ten days before the time appointed for hearing the petition, or published at least four successive weeks in such newspaper as the court shall specify. If all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

Sec. 184. If, upon hearing the petition, it appears to the satisfaction of the probate judge that it is to the interest of the estate that such mining property or interests of the estate should be sold; or if it appears to his satisfaction that an immediate sale is necessary in order to secure the just rights or interests of the mining partners or tenants in common, in which such shares, stocks, or property are held, such probate judge must make an order authorizing the executor or administrator to sell such mining interests, mines, or shares, as hereinafter provided.

Sec. 185. After the order of sale is made, all further proceedings for the sale of such mining property, and for the notice, report, and confirmation thereof, must be in conformity with the provisions of Article IV of this chapter.

ARTICLE IV.

THE SALE OF REAL ESTATE, INTERESTS THEREIN, AND CONFIRMATION THEREOF.

Sec. 186. *When personal estate insufficient, real estate may be sold.*
Sec. 187. *Petition for sale of real estate.*
Sec. 188. *Order to show cause.*
Sec. 189. *Copy to be served; when notice dispensed with.*
Sec. 190. *Hearing, and what may be passed on thereat.*
Sec. 191. *Attendance and examination of witnesses.*
Sec. 192. *When court may order the sale of the whole of the real estate.*
Sec. 193. *If court be satisfied order of sale to be made.*
Sec. 194. *Order of sale.*
Sec. 195. *Other persons may petition for order of sale.*
Sec. 196. *Notice of sale at public auction.*
Sec. 197. *Place and hours of sale.*
Sec. 198. *Proceedings when sold at private sale.*
Sec. 199. *Confirmation of sale and new appraisement.*
Sec. 200. *Credit sales on security.*
Sec. 201. *Report of sale and hearing thereon; order of re-sale; confirmation.*
Sec. 202. *Hearing and objections on return of sale.*
Sec. 203. *Order confirming sale; when purchaser refuses to pay order of re-sale.*
Sec. 204. *Conveyances after sale; what passes.*
Sec. 205. *What must appear before confirmation.*
Sec. 206. *Postponement of sale.*
Sec. 207. *Notice of postponement.*
Sec. 208. *Will to be followed in paying debts, etc.*
Sec. 209. *Sales made without order if the will so direct, but such sales must be reported.*
Sec. 210. *Proceedings when provision made by will is insufficient.*
Sec. 211. *Liability of property given to legatees and devisees for debts of estate.*
Sec. 212. *Contribution by devisees or legatees.*
Sec. 213. *Interests in contract for purchase of land may be sold.*
Sec. 214. *How sale under last section made.*
Sec. 215. *Purchaser's bond under preceding section.*
Sec. 216. *Assignment of contract and effect thereof.*
Sec. 217. *Mortgaged property; disposal of purchase money.*
Sec. 218. *Mortgagee may become the purchaser.*
Sec. 219. *Action for damages on bond of administrator.*
Sec. 220. *Fraudulent sales by administrator.*
Sec. 221. *Limitation of action to recover estate of decedent sold under the provisions of this chapter.*
Sec. 222. *Limitation when persons under legal disability to sue.*
Sec. 223. *Return of account of sales.*
Sec. 224. *Administrator shall not purchase.*

Sec. 186. When the personal estate in the hands of the executor or administrator is exhausted, or insufficient to pay the allowance of the family, the debts outstanding against the decedent, and the debts, expenses, and charges of administration, the executor or administrator may sell the real estate for that purpose, upon the order of the probate court.

SEC. 187. To obtain an order for the sale of real property, he must present a verified petition to the probate court, or to the judge at chambers, setting forth the amount of personal property that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses, and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general discription of all the real property of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof, and whether the same be community or separate property; the names of the legatees and devisees, if any, and of the heirs of the decedent, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree.

SEC. 188. If it appear to the court or judge from such petition that it is necessary to sell the whole or some portion of the real estate for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed, and an order thereupon made directing all persons interested in the estate to appear before the court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

SEC. 189. A copy of the order to show cause must be personally served on all persons interested in the estate, any general guardian of a minor so interested, and any legatee, or devisee, or heir of the decedent, provided they are residents of the county, at least ten days before the time appointed for hearing the petition, or be published four successive weeks in such newspaper in the county as the court or judge shall direct. If all persons interested in the estate join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with, and the hearing may be had at any time.

SEC. 190. The probate court, at the time and place appointed in such order, or at such other time to which the hearing may be postponed, upon satisfactory proof of personal service or publication of a copy of the order, by affidavit or otherwise, if the consent, in writing, to such sale, of all parties interested is not filed, must proceed to hear the petition, and hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application. All claims against the decedent not before presented, if the period of presentation has not elapsed, may be presented and passed upon at the hearing.

SEC. 191. The executor, administrator, and witnesses may be examined on oath by either party, and process to compel them to attend and testify may be issued by the probate judge, in the same manner and with like effect as in other cases.

SEC. 192. If it appears necessary to sell a part of the real estate, and that by a sale thereof the residue of the estate, real or personal, or some specific part thereof, would be greatly injured, or diminished in value, or subjected to expense, or rendered unprofitable, or that after any such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interest of all concerned that the same should be sold, the court may authorize the sale of the whole estate or any part thereof necessary and for the best interests of all concerned.

SEC. 193. If the court is satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes mentioned in this article, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition as the court shall judge necessary or beneficial.

SEC. 194. The order of sale must describe the lands to be sold and the terms of sale, which may be for cash or on a credit not exceeding one year, payable in gross or installments, and in such kind of money, with interest, as the court may direct. The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs. If it appears that any of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction, unless in the opinion of the court it would benefit the estate to sell the whole or some part of such real estate at private sale. The court may, if the same is asked for in the petition, order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for the estate.

If the executor or administrator neglects or refuses to make a sale under the order and as directed therein, he may be compelled to sell, by order of the court, made on motion, after due notice, by any party interested.

SEC. 195. If the executor or administrator neglects to apply for an order of sale when it is necessary, any person may make application therefor, in the same manner as the executor or administrator, and notice thereof must be given to the executor or administrator before the hearing. The petition of such applicant must contain as many of the matters in section 179 as he can ascertain, and the decree of the sale must fix the period of time within which the executor or administrator must make the sale.

SEC. 196. When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, but if none, then in such paper as the court may direct, for three weeks successively next before the sale; the lands and tenements to be sold must be described with common certainty in the notice.

SEC. 197. Sales at public auction must be made in the county where the land is situated, but when the land is situated in two or more counties it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and must be made on the day named in notice of sale, unless the same is postponed.

SEC. 198. When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, if none, then in such paper as the court may direct, for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice, and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of the clerk of the probate court, to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale.

If it is shown that it will be for the best interest of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order.

SEC. 199. No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent. of the appraised value thereof, nor unless such real estate has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers must be appointed, and they must make an appraisement thereof in the same manner as in the case of an original appraisement of an estate. This may be done at any time before the sale or confirmation thereof.

SEC. 200. The executor or administrator must, when the sale is made upon a credit, take the notes of the purchaser for the purchase money, with a mortgage on the property to secure their payment.

SEC. 201. The executor or administrator, after making any sale of real estate, must make a return of his proceedings to the probate court, which must be filed in the office of the clerk at any time subsequent to the sale, either in term or vacation. If the sale is made at public auction and the return made and filed on or before the first day of the next term thereafter, no notice is required of such return, or of the hearing thereof, but the hearing may be had upon the first day of the term, or any subsequent day to which the same may be postponed. If the sale be not made at public auction, or, if made at public auction, a hearing upon the return of proceedings be asked for in the return, or is brought on for a hearing upon a day before the first day of the next term after such sale, the court or judge must fix the day for the hearing, of which notice of at least ten days must be given by the clerk, by notices posted in three public places in the county, or by publication in a newspaper, or both, as the court or judge shall direct, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing the court must examine the return and witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and that a sum exceeding such bid, at least ten per cent. exclusive of the expenses of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given, and the sales in all respects conducted as if no previous sale had taken place. If an offer of ten per cent. more in amount than that named in the return be made to the court in writing by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person, or to order a new sale.

SEC. 202. When return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation thereof, and may be heard thereon when the return is heard by the court or judge, and may produce witnesses in support of his objections.

SEC. 203. If it appears to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum as above specified cannot be obtained, or if the increased bid mentioned in section 201 be made and accepted by the court, the court must make an order confirming the sale and directing conveyances to be executed. The sale from that time is confirmed and valid; and a certified copy of the order confirming it and directing conveyances to be executed, must be recorded in the office of the recorder of the county within which the land sold is situated. If, after the confirmation, the purchaser neglects or refuses to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a re-sale to be made of the property. If the amount realized on such re-sale does not cover the bid and expenses of the previous sale, such purchaser is liable for the deficiency to the estate.

SEC. 204. Conveyances must thereupon be executed to the purchaser by the executor or administrator, and they must refer to the orders of the probate court authorizing and confirming the sale of the property of the estate, and directing the conveyances thereof to be executed, and to the record of the confirmation, in the office of the county recorder, either by the date of such recording or by the date, volume and page of the record, and such references shall have the same effect as if the order were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest and estate of the decedent in the premises at the time of his death, if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title or interest in the premises other than or in addition to that of the decedent at the time of his death, such right, title or interest also passes by such conveyance.

SEC. 205. Before any order is entered confirming the sale, it must be proved to the satisfaction of the court that notice was given of the sale as prescribed, and the order of confirmation must show that such proof was made.

SEC. 206. If, at the time appointed for the sale, the executor or administrator deems it for the interest of all persons concerned therein that the same be postponed, he may postpone it from time to time, not exceeding in all three months.

SEC. 207. In case of a postponement, notice thereof must be given by public declaration at the time and place first appointed for the sale, and if the postponement be for more than one day, further notice must be given by posting notices in three or more public places in the county where the land is situated, or publishing the same, or both, as the time and circumstances will admit.

SEC. 208. If the testator makes provision by his will, or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they must be paid according to such provision or designation, out of the estate thus appropriated, so far as the same is sufficient.

SEC. 209. When property is directed by the will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the probate court, and at either public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

SEC. 210. If the provision made by the will, or the estate appropriated therefor, is insufficient to pay the debts, expenses of administration, and family expenses, that portion of the estate not devised or disposed of by the will, if any, must be appropriated and disposed of for that purpose, according to the provisions of this chapter.

SEC. 211. The estate, real and personal, given by will to legatees or devisees, is liable for the debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, but specific devises or legacies are exempt from such liability if it appears to the court necessary to carry into effect the intention of the testator, and there is other sufficient estate.

SEC. 212. When an estate, given by will, has been sold for the payment of debts or expenses, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been taken therefor, and the probate court, when distribution is made, must, by decree for that purpose, settle the amount of the several liabilities and decree the amount each person shall contribute, and reserve the same from their distributive shares respectively for the purpose of paying such contribution.

SEC. 213. If a decedent, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land and under such contracts may be sold, on the application of his executor or administrator, in the same manner as if he had died seized of such lands, and the same proceedings may be had for that purpose as are prescribed in this chapter for the sale of lands of which he died seized, except as hereinafter provided.

SEC. 214. The sale must be made subject to all payments that may thereafter become due on such contracts, and if there are any such the sale must not be confirmed by the probate judge until the purchasers execute a bond to the executor or administrator for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with sureties as the probate judge shall approve.

SEC. 215. The bond must be conditioned that the purchaser will make all payments for such land that become due after the date of the sale, and will fully indemnify the executor or administrator and the persons so entitled against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in such contract.

SEC. 216. Upon the confirmation of the sale the executor or administrator must execute to the purchaser an assignment of the contract, which vests in the purchaser, his heirs and assigns, all the right, title, and interest of the estate, or of the persons entitled to the interest of the decedent in the lands sold at the time of the sale, and the purchaser has the same rights and remedies against the vendor of such land as the decedent would have had if he were living.

SEC. 217. When any sale is made by an executor or administrator, pursuant to the provisions of this chapter, of lands subject to any mortgage or other lien which is a valid claim against the estate of the decedent, and has been presented and allowed, the purchase money must be applied, after paying the necessary expenses of the sale, first, to the payment and satisfaction of the mortgage or lien, and the residue, if any, in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay, and the land is subject to such mortgage or lien until the purchase money has been actually so applied. No claim against any estate, which has been presented and allowed, is affected by the statute of limitations, pending the proceedings for the settlement of the estate.

The purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, with interest, and any lawful costs and charges thereon, may be paid into the probate court, to be received by the clerk thereof, whereupon the mortgage or lien upon the land must cease; and the purchase money must be paid over by the clerk of the court without delay, in payment of the expenses of the sale, and in satisfaction of the debt to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the executor or administrator, unless, for good cause shown, after notice to the executor or administrator, the court otherwise directs.

SEC. 218. At any sale, under order of the probate court, of lands upon which there is a mortgage or lien, the holder thereof may become the purchaser, and his receipt for the amount due him from the proceeds of the sale is a payment *pro tanto*. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay to the court or the clerk thereof an amount sufficient to pay such expenses.

SEC. 219. If there is any neglect or misconduct in the proceedings of the executor in relation to any sale, by which any person interested in the estate suffers damage, the party aggrieved may recover the same in an action upon the bond of the executor or administrator, or otherwise.

SEC. 220. Any executor or administrator who fraudulently sells any real estate of a decedent, contrary to or otherwise than under the provisions of this chapter, is liable in double the value of the land sold, as liquidated damages, to be recovered in an action by the person having an estate of inheritance therein.

SEC. 221. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter, can be maintained by any heir or other person claiming under the decedent, unless it be commenced within three years next after the sale. An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud, or other grounds upon which the action is based.

SEC. 222. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action first accrues, but all such persons may commence an action at any time within three years after the removal of the disability.

SEC. 223. When a sale has been made by an executor or administrator of any property of the estate, real or personal, he must return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglects to make such return he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

SEC. 224. No executor or administrator must, directly or indirectly, purchase any property of the estate he represents, nor must he be interested in any such sale.

CHAPTER VIII.

ARTICLE I.

OF THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS AND OF THE MANAGEMENT OF ESTATES.

Sec. 225. *Possession of estate by executor or administrator.*
Sec. 226. *Actions by or against administrator and executor.*
Sec. 227. *Actions for injuries to property of decedent committed during his lifetime.*
Sec. 228. *Actions for injuries committed by decedent in his lifetime.*
Sec. 229. *Rights and duties of surviving partner of decedent.*
Sec. 230. *Action upon bond of prior executor or administrator.*
Sec. 231. *Joinder of parties in actions by or against executor.*
Sec. 232. *Compounding with debtor of estate.*
Sec. 233. *Proceedings against estate of fraudulent and insolvent decedent.*
Sec. 234. *Security by creditors in such proceedings.*
Sec. 235. *Disposition of estate recovered in such proceedings.*

SEC. 225. The executor or administrator must take into his possession all the estate of the decedent, real or personal, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title, or for partition of such estate, the possession of the executors or administrators is the possession of the heirs or devisees; such possession by the heirs or devisees is subject, however, to the possession of the executor or administrator for the purposes of administration, as provided in this title.

SEC. 226. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

SEC. 227. Executors and administrators may maintain actions against any person who has wasted, destroyed, taken or carried away or converted to his own use, the goods of the testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the decedent in his lifetime.

SEC. 228. Any person, or his personal representatives, may maintain an action against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

SEC. 229. When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner has the right to continue in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership must be included in the inventory and be appraised and appropriated as other property. The surviving partner must settle the affairs of the partnership without delay, and account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of the decedent. Upon the application of the executor or administrator, the probate judge may, whenever it appears necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment, and the executor or administrator may maintain against him any action which the decedent could have maintained.

SEC. 230. An administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

SEC. 231. In actions by or against executors it is not necessary to join those as parties to whom letters were issued, but who have not qualified.

SEC. 232. Whenever a debtor of a decedent is unable to pay all his debts, the executor or administrator, with the approbation of the probate court or judge, may compound with him and give him a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it appears to be just and for the best interest of the estate.

SEC. 233. When there is a deficiency of assets in the hands of an executor or administrator, and when the decedent in his lifetime has conveyed any real estate or any rights or interests therein with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or has so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator must commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, or credits which have been so conveyed by the decedent in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 234. No executor or administrator is bound to sue for such estate as is mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit, or give security to the executor or administrator therefor, as the probate judge shall direct.

SEC. 235. All real estate so recovered must be sold for the payment of debts in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from the probate court, and the proceeds of all goods, chattels, rights, and credits so recovered must be appropriated in payment of the debts of the decedent, in the same manner as other property in the hands of the executor or administrator.

CHAPTER IX.

ARTICLE I.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

Sec. 236. *Court may authorize completion of contract to convey.*
Sec. 237. *Petition for conveyance, notice and hearing thereof.*
Sec. 238. *At the hearing interested parties may contest.*
Sec. 239. *Decree ordering execution of conveyance.*
Sec. 240. *Execution and record of conveyance.*
Sec. 241. *Dismissal of action without prejudice to action in district court.*
Sec. 242. *Effect of conveyance made under this chapter.*
Sec. 243. *Effect of recording copy of the decree.*
Sec. 244. *Record of not to prevent enforcement by other process.*
Sec. 245. *Successor of person entitled to conveyance; rights of.*
Sec. 246. *When decree may direct surrender of possessions.*

SEC. 236. When a person who is bound by contract, in writing, to convey any real estate, dies before making the conveyance, and in all cases where such decedent, if living, might be compelled to make such conveyance, the probate court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto.

SEC. 237. On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the probate court must appoint a time and place for hearing the petition, at a regular term of the court, and must order notice thereof to be published at least four successive weeks before such hearing, in such newspaper in this Territory as he may designate.

SEC. 238. At the time and place appointed for the hearing, or at such other time to which the same may be postponed, upon satisfactory proof, by affidavit or otherwise, of the due publication of the notice, the court must proceed to a hearing, and all persons interested in the estate may appear and contest such petition by filing their objections in writing. and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

SEC. 239. If, after a full hearing upon the petition and objections, and examination of the facts and circumstances of the claim, the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner must be made, entered on the minutes of the court, and recorded.

SEC. 240. The executor or administrator must execute the conveyance according to the directions of the decree, a certified copy of which must be recorded with the deed in the office of the recorder of the county where the lands lie, and is *prima facie* evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

SEC. 241. If, upon hearing in the probate court, as hereinbefore provided, the right of the petitioner to have a specific performance of contract is found to be doubtful, the court must dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months thereafter, proceed in the district court to enforce a specific performance thereof.

SEC. 242. Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall pass the title to the estate contracted for as fully as if the contracting party himself was still living and executed the conveyance.

SEC. 243. A copy of the decree for a conveyance, made by the probate court and duly certified and recorded in the office of the recorder of the county where the land lies, gives the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

SEC. 244. The recording of any decree, as provided in the preceding section, shall not prevent the court making the decree from enforcing the same by other process.

SEC. 245. If the person entitled to conveyance dies before the commencement of proceedings therefor under this chapter, or before the completion of the conveyance, any person entitled to succeed his rights in the contract, or the executor or administrator of such decedent, may, for the benefit of the person so entitled, commence such proceedings or prosecute any already commenced, and the conveyance must be so made as to vest the estate in the persons entitled to it, or in the executor or administrator for their benefit.

SEC. 246. The decree provided for in this chapter may direct the possession of the property therein described to be surrendered to the person entitled thereto, upon his producing the deed and a certified copy of the decree, when, by the terms of the contract, possession is to be surrendered.

CHAPTER X.

OF THE ACCOUNTS RENDERED BY EXECUTORS AND ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

ARTICLE I.

LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS.

Sec. 247. *Persona' liability of executor or administrator.*
Sec. 248. *Executor or administrator chargeable with whole estate, except, etc.*
Sec. 249. *Not to profit or lose by estate.*
Sec. 250. *Not chargeable with uncollected debts without fault.*
Sec. 251. *Allowance and compensation of executor.*
Sec. 252. *Not to purchase any claim.*
Sec. 253. *Commissions and allowance for extraordinary service.*

Sec. 247. No executor or administrator is chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note therefor, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Sec. 248. Every executor and administrator is chargeable in his own account with the whole of the estate of the decedent which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

Sec. 249. He shall not make profit by the increase nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than appraisement, and if any is sold for less than the appraisement he is not responsible for the loss, if the sale has been justly made.

Sec. 250. No executor or administrator is accountable for any debts due to the decedent, if it appears that they remain uncollected without his fault.

Sec. 251. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, including reasonable fees paid to attorneys for conducting the necessary proceedings or suits in the probate or other courts, and for his services such fees as provided in this chapter; but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be full compensation for his services, unless, by a written instrument filed in the probate court, he renounces all claims for compensation provided by the will.

Sec. 252. No administrator or executor shall purchase any claim against the estate he represents, and if he pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

Sec. 253. When no compensation is provided by the will or the executor renounces all claim thereto, he must be allowed commissions upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars at the rate of seven per cent; for all above that sum at the rate of four per cent; and the same commission must be allowed administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable for any extraordinary service; the total amount of such allowance must not exceed the amount of commissions allowed by this section, and that public administrators shall receive the same compensation and allowances as are allowed in this Title to other administrators.

ARTICLE II.

ACCOUNTING AND SETTLEMENTS BY EXECUTORS AND ADMINISTRATORS.

Sec. 254. *Exhibit to be rendered at third term of court.*
Sec. 255. *Citation to issue in case of failure.*
Sec. 256. *Petition to compel exhibit of account.*
Sec. 257. *Citation requiring an account.*
Sec. 258. *Contesting of account; when letters revoked.*
Sec. 259. *Upon failure after citation, attachment to issue.*
Sec. 260. *Annual account; what to contain.*
Sec. 261. *Account after revocation of letters.*
Sec. 262. *Upon failure to account letters to be revoked.*
Sec. 263. *Vouchers to be produced and filed.*
Sec. 264. *Items of less than twenty dollars allowed without vouchers.*
Sec. 265. *Time and notice of settlement of account.*
Sec. 266. *Notice of final settlement and distribution.*
Sec. 267. *Exceptions to and contest of account.*
Sec. 268. *Contest by heirs on cause shown; reference.*
Sec. 269. *Effect of settlement and allowance of account.*
Sec. 270. *Proof of notice of settlement.*
Sec. 271. *Sale of personal upon application to sell real property.*
Sec. 272. *Order to invest moneys of estate.*

SEC. 254. At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon his own motion or upon the application of any person interested in the estate, the executor or administrator must render, for the information of the court, an exhibit, under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

SEC. 255. If the executor or administrator fails to render an exhibit at the third term of the court, the judge of the probate court must cause a citation to be issued requiring him to appear and render it.

SEC. 256. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

SEC. 257. If the judge is satisfied, either from the oath of the applicant or from any other testimony offered, that the facts alleged are true, and considers the showing of the applicant sufficient, he must direct a citation to be issued to the executor or administrator, requiring him to appear at some day to be named in the citation, which must be during a term of the court, and render an exhibit as prayed for.

SEC. 258. When an exhibit is rendered by an executor or administrator, any person interested may appear, and, by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of neglect, or has wasted, embezzled, or mismanaged the estate, his letters must be revoked.

SEC. 259. If any executor or administrator neglects or refuses to appear and render an exhibit, after having been duly cited, an attachment may be issued against him, and such exhibit enforced, or his letters may be revoked in the discretion of the court.

SEC. 260. Every executor or administrator must render a full account and a report of his administration at the expiration of one year from the time of his appointment. If he fails to present his account the court or judge must compel the rendering of the account by attachment, and any person interested in the estate may apply for and obtain an attachment; but no attachment must issue unless a citation has been first issued, served, and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered must exhibit not only the debts which have been paid, but also a statement of all debts which have been duly presented and allowed during the period embraced in the account.

SEC. 261. When the authority of an executor or administrator ceases or is revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

SEC. 262. If the executor or administrator resides out of the county, or absconds, or conceals himself so that the citation can not be personally served, and neglects to render an account within thirty days after the time prescribed in this article, or if he neglects to render an account within thirty days after being committed, where the attachment has been executed, his letters must be revoked.

SEC. 263. In rendering his account the executor or administrator must produce and file vouchers for all charges, debts, claims, and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reasons cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

SEC. 264. On the settlement of his account he may be allowed any item of expenditure, not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own uncontradicted oath, positive to the fact of payment, specifying when, where, and to whom it was made; but such allowance, in the whole, must not exceed five hundred dollars against any one estate.

SEC. 265. When any account is rendered for settlement, the court or judge must appoint a day for the settlement thereof. The clerk must thereupon give notice thereof, by causing notices to be posted in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account, which must be on some day of a term of the court. The court or probate judge may order such further notice to be given as may be proper.

SEC. 266. If the account mentioned in the preceding section be for a final settlement, and the estate be ready for distribution, the notice of the settlement must state those facts, and must be served, published, or waived in the same manner as provided in section 180 of this code, relating to sales of property; and on confirmation of the final account, distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings. If, from any cause, the hearing of the account or the partition and distribution be postponed, the order postponing the same to a day certain is notice to all persons interested therein.

SEC. 267. On the day appointed, or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

SEC. 268. All matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs, for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation, and may allow a reasonable compensation to the referees, to be paid out of the estate of the decedent.

SEC. 269. The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons in any way interested in the estate; saving, however, to all persons laboring under any legal disability their right to move, for cause, to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution, and in any action brought by any such person the allowance and settlement of the account is *prima facie* evidence of its correctness.

SEC. 270. The account must not be allowed by the court until it is first proved that notice has been given as required by this chapter, and the decree must show that such proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

SEC. 271. Whenever it appears to the court, on any hearing of an application for the sale of real property, that it would be for the interest of the estate that personal property of the estate, or some part of such property, should be first sold, the court may decree the sale of such personal property, or any part of it, and the sale thereof shall be conducted in the same manner as if the application had been made for the sale of such personal property in the first instance.

SEC. 272. Pending the settlement of any estate, on the petition of any party interested therein, the probate court may order any moneys in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or of this Territory. Such order can only be made after publication of notice of the petition in some newspaper, to be designated by the judge.

ARTICLE III.

THE PAYMENT OF DEBTS OF THE ESTATE.

Sec. 273. *Order in which debts must be paid.*
Sec. 274. *Payment of mortgage lien, etc.*
Sec. 275. *Apportionment when assets insufficient.*
Sec. 276. *Time in which claims to be paid.*
Sec. 277. *Order of court to pay debts; when account deemed final.*
Sec. 278. *Payment of certain claims into court and of rebate of interest.*
Sec. 279. *Liability when claim is allowed and ordered paid.*
Sec. 280. *Remedy when claim is not included in order of payment.*
Sec. 281. *Distribution after payment of debts.*
Sec. 282. *Final account after time has been extended.*
Sec. 283. *Proceedings upon neglect to render same.*

Sec. 273. The debts of the estate must be paid in the following order:

First. Funeral expenses.

Second. Expenses of last sickness.

Third. The wages of each minor, mechanic, salesman, clerk, servant, or laborer, for services rendered within forty days next preceding the death of the employer, not exceeding one hundred dollars.

Fourth. Debts due the county, Territory, or United States.

Fifth. All other demands against the estate, except that where a lien exists by mortgage, pledge, attachment, or judgment, such lien shall have preference to the extent of such demand on any specific property to which such lien may attach.

Sec. 274. The preference given in the preceding section to a mortgage only extends to the proceeds of the property mortgaged. If the proceeds of such property are insufficient to pay the mortgage, the part remaining unsatisfied must be classed with other demands against the estate.

Sec. 275. If the estate is insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any one class shall receive such payment until all those of the preceding class are fully paid.

Sec. 276. The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses, and the expenses of the last sickness, and the allowance made to the family of the decedent. He may retain in his hands the necessary expenses of administration, but he is not obliged to pay any other debt, or any legacy, until, as prescribed in this article, the payment has been ordered by the court.

Sec. 277. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this chapter, the court must make an order for the payment of the debts, as the circumstances of the estate require. If there are not sufficient funds in the hands of the executor or administrator, the court must specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account must be considered as a final account, and the executor or administrator is entitled to his discharge on producing and filing the necessary vouchers and proofs, showing that such payments have been made, and that he has fully complied with the decree of the court.

Sec. 278. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, established, or absolute, must be paid into the court, and there remain to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If any creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section are not to be made when the estate is insolvent, unless a *pro rata* distribution is ordered.

Sec. 279. When a decree is made by the probate court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on such decree, as upon a judgment in the district court, in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the district court. The executor or administrator is liable therefor, on his bond, to each creditor.

Sec. 280. When the accounts of the administrator or executor have been settled and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to the creditors, as prescribed in section 148, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed. This section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such date.

Sec. 281. If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled, as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reasons, the estate be not in a proper condition to be closed, the court must give such extension of time as may be reasonable for a final settlement of the estate.

Sec. 282. At the time designated in the last section, or sooner, if within that time all the property of the estate has been sold, or there are sufficient funds in his hands for the payment of all the debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator must render a final account and pray a settlement of his administration.

SEC. 283. If he neglects to render his account, the same proceedings may be had as provided in this chapter in regard to the first account to be rendered by him, and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, apply to his account presented for final settlement.

CHAPTER XI.

ARTICLE I.

PARTIAL DISTRIBUTION PRIOR TO FINAL SETTLEMENT.

Sec. 284. *Payment of shares on giving bonds.*
Sec. 285. *Notice of application for same.*
Sec. 286. *Application may be resisted.*
Sec. 287. *Hearing; order of payment; costs of proceeding.*
Sec. 288. *Petition for and order of payment by bondsmen.*

SEC. 284. At any time after the lapse of four months from the issuing of letters testamentary or of administration, any heir, devisee, or legatee, may present his petition to the court for the legacy or share of the estate to which he is entitled, to be given to him on his giving bonds, with security, for the payment of his proportion of the debts of the estate.

SEC. 285. Notice of the application must be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

SEC. 286. The exacutor or administrator, or any person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee, or legatee may make a similar application for himself.

SEC. 287. If, at the hearing, it appears that the estate is but little indebted, and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

First. Each heir, legatee, or devisee obtaining such order, before receiving his share or any portion thereof, to execute and deliver, to the executor or administrator a bond in such sum as shall be designated by the probate judge, with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled.

Second. The executor or administrator to deliver to the heir, legatee, or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof, designating it. If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed.

The costs of these proceedings to be paid by the applicant, or, if there be more than one, to be apportioned equally amongst them.

Sec. 288. When any bond has been executed and delivered under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, the court, if satisfied of the necessity of such payment, must make an order accordingly, designating the amount and giving a time within which it must be paid. If the money is not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

ARTICLE II.

DISTRIBUTION ON FINAL SETTLEMENT.

Sec. 289. *When estate distributed and of the expenses of closing.*
Sec. 290. *What to contain and effect of decree.*
Sec. 291. *Proceedings when decedent was a non-resident and left a will.*
Sec. 292. *Decree made on petition; jurisdiction in partition.*
Sec. 293. *Payment of taxes a condition precedent to distribution.*

Sec. 289. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, or devisee, the court must proceed to distribute the residue of the estate, if any, in the hands of the executor or administrator, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed to the other heirs at law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution, and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court and included in the order or decree; or, the court or judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts.

Sec. 290. In the order or decree the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, sue for, and recover their respective shares from the executor or administrator, or any person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees, or devisees, subject only to be reversed, set aside, or modified on appeal.

SEC. 291. Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this Territory, leaving a will which has been duly proved or allowed in the State or Territory of his residence, and an authenticated copy thereof has been admitted to probate in this Territory, and it is necessary, in order that the estate or any part thereof may be distributed according to the will, that the estate in this Territory should be delivered to the executor or administrator in the State or place of his residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed, in this Territory, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate ordered by virtue of this section must be made in the same manner as other sales of real estate of decedents by order of the probate court.

SEC. 292. The order or decree may be made on the petition of the executor or administrator, or of any person interested in the estate. Notice of the application must be given by posting or publication, as the court may direct, and for such time as may be ordered. If partition be applied for, as provided in this chapter, the decree of distribution shall not divest the court of jurisdiction to order partition, unless the estate is finally closed.

SEC. 293. Before any decree of distribution of an estate is made, the probate court must be satisfied, by the oath of the executor or administrator or otherwise, that all territorial, county, and municipal taxes legally levied upon the personal property of the estate, have been fully paid.

ARTICLE III.

DISTRIBUTION AND PARTITION.

Sec. 294. *Appointment of commissioners to make partition.*
Sec. 295. *Petition for partition and notice thereof.*
Sec. 296. *Partition of estate situated in several counties.*
Sec. 297. *When heirs have conveyed their shares.*
Sec. 298. *When shares set out by metes and bounds.*
Sec. 299. *Partition when real estate can not be divided without injury.*
Sec. 300. *Payments to equalize partition.*
Sec. 301. *Sale of estate when it can not be fairly divided.*
Sec. 302. *Notice of partition and power of commissioners.*
Sec. 303. *Report of commissioners; decree on same, and record thereof.*
Sec. 304. *Partition not necessary unless requested.*
Sec. 305. *Advancements made to heirs.*

SEC. 294. When the estate, real or personal, assigned by the decree of distribution, to two or more heirs, devisees, or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate court or judge, who must be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority and is governed by the same rules as if three were appointed.

Sec. 295. Such partition may be ordered and had in the probate court, on the petition of any person interested. But before commissioners are appointed, or partition ordered by the probate court as directed in this chapter, notice thereof must be given to all persons interested, who reside in this Territory, or to their guardians, and to the agents, attorneys, or guardians, if any, in this Territory, of such as reside out of the Territory, either personally or by public notice, as the probate court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given, at any time before the order or decree of distribution, but the commissioners must not be appointed until the order or decree is made distributing the estate.

Sec. 296. If the real estate is in different counties, the probate court may, if deemed proper, appoint a commissioner for all, or different commissioners for each county. The estate in each county must be divided separately among the heirs, devisees, or legatees, as if there was no other estate to be divided, but the commissioner first appointed must, unless otherwise directed by the probate court, make division of such real estate, wherever situated within this Territory.

Sec. 297. Partition or distribution of the real estate may be made as provided in this chapter, although some of the original heirs, legatees, or devisees may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

Sec. 298. When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right by metes and bounds, or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

Sec. 299. When the real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger. The parties accepting the whole must pay to other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or, in case of the minority of such party, then to the satisfaction of his guardian; and the true value of the estate must be ascertained and reported by commissioners appointed to make partition. If the commissioners are of the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to the court, and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the commissioners, and on making or securing the payment as before provided for, the court, if it appears just and proper, must confirm the report, and thereupon the assignment is complete, and the title to the whole of such real estate vests in the person to whom the same is so assigned.

SEC. 300. When any tract of land or tenement is of greater value than any one's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others such sums as the commissioners shall award to make the partition equal, and the commissioners must make their award accordingly; but such partition must not be established by the court until the sums awarded are paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 301. When it appears to the court, from the commissioners' report, that it can not otherwise be fairly divided, and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commissioner appointed for that purpose, and the proceeds distributed. The sale must be conducted, reported and confirmed, in the same manner and under the same requirements provided in Article IV, Chapter VII, of this Title.

SEC. 302. Before any partition is made, or any estate divided, as provided in this chapter, notice must be given to all persons interested in the partition, their guardians, agents, or attorneys, by the commissioners, of the time and place when and where they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

SEC. 303. The commissioners must report their proceedings, and the partition agreed upon by them, to the probate court, in writing, and the court may, for sufficient reasons, set aside the report, and commit the same to the same commissioners, or appoint others; and when such report is finally confirmed, a certified copy of the judgment or decree of partition made thereon, attested by the clerk, under the seal of the court, must be recorded in the office of the recorder of the county where the lands lie.

SEC. 304. When the probate court makes a judgment or decree, assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint commissioners to make partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that such partition be made.

SEC. 305. All questions as to the advancements made, or alleged to have been made, by the decedent to his heirs, may be heard and determined by the probate court, and must be specified in the decree assigning and distributing the estate; and the final judgment or decree of the probate court, or, in case of appeal, of the supreme court, is binding on all parties interested in the estate.

ARTICLE IV.

AGENTS FOR ABSENT INTERESTED PARTIES—DISCHARGE OF EXECUTOR OR ADMINISTRATOR.

Sec. 306. *Agent to be appointed; when.*
Sec. 307. *Bond and compensation of agent.*
Sec. 308. *Disposition of unclaimed personal estate.*
Sec. 309. *Annual account of agent; sale of real and personal property.*
Sec. 310. *Liability of bond of agent.*
Sec. 311. *Proceedings if claimant appear.*
Sec. 312. *Discharge of agent.*
Sec. 313. *Final settlement under this chapter not to prevent the issue of subsequent letters in certain cases.*

Sec. 306. When any estate is assigned or distributed by a judgment or decree of the court, as provided in this chapter, to any person residing out of and having no agent in this Territory, and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the distribution.

Sec. 307. The agent must first give a bond to the probate judge, to be approved by him, conditioned that he shall faithfully manage and account for the estate. The court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Sec. 308. When personal property remains in the hands of the agent unclaimed for a year, and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds, after deducting the expenses of the sale allowed by the court, must be paid into the Territorial treasury. When the payment is made the agent must take from the treasury duplicate receipts, one of which he must file in the office of the Territorial auditor, and the other in the probate court.

Sec. 309. The agent must render to the probate court appointing him, annually, an account showing:

First. The value and character of the property received by him, what portion thereof is still on hand, what sold, and for what.

Second. The income derived therefrom.

Third. The taxes and assessments imposed thereon, for what, and whether paid or unpaid.

Fourth. Expenses incurred in the care, protection and management thereof, whether paid or unpaid, when filed.

The probate court may examine witnesses and take proofs in regard to the account, and, if satisfied from such accounts and proofs that it will be for the benefit and advantages of the persons interested therein, the court may, by order, direct a sale to be made of the whole or such parts of the real or personal property as shall appear to be proper, and the purchase money to be deposited in the Territorial treasury.

Sec. 310. The agent is liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale as required in the preceding sections, and may be sued thereon by any person interested.

SEC. 311. When any person appears and claims the money paid into the treasury, the probate court making the distribution must inquire into such claim, and, being first satisfied of his right thereto, must grant him a certificate to that effect, under its seal; and upon the presentation of the certificate to him, the Territorial auditor must draw his warrant on the treasurer for the amount.

SEC. 312. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court must make a judgment or decree, discharging him from all liability to be incurred thereafter.

SEC. 313. The final settlement of an estate, as in this chapter provided, shall not prevent a subsequent issue of letters testamentary, or of administration, or of administration with the will annexed, if other property of the estate be discovered, or if it become necessary or proper, for any cause, that letters should be again issued.

CHAPTER XII.

OF ORDERS, DECREES, PROCESS, MINUTES, RECORDS, TRIALS, AND APPEALS.

Sec. 314. *Orders and decrees; what to contain and how entered.*
Sec. 315. *Publication; how often to be made.*
Sec. 316. *Record imparts notice.*
Sec. 317. *Citations; requisites of.*
Sec. 318. *May be issued by clerk except, etc.*
Sec. 319. *How served.*
Sec. 320. *Personal notice given by citation.*
Sec. 321. *To be served five days before return.*
Sec. 322. *Description of lands to be sold.*
Sec. 323. *Rules of practice.*
Sec. 324. *Civil practice act shall apply to new trials and appeals; when appeals taken; of reversal on appeal.*
Sec. 325. *Time in which appeal taken.*
Sec. 326. *Trials of issues of fact; of parties and the judgment.*
Sec. 327. *Of trial by court and jury and motion for new trial.*
Sec. 328. *Of the appointment and substitution of attorneys, their fees and duties.*
Sec. 329. *Certified copies of certain decrees to be recorded.*
Sec. 330. *Discretionary power as to costs; execution for.*
Sec. 331. *Removal of executor or administrator or guardian for contempt.*
Sec. 332. *Service on and appearance of guardian.*

SEC. 314. Orders and decrees made by the probate court, or the judge thereof, need not recite the existence of facts, or the performance of acts upon which the jurisdiction of the court or judge may depend; but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided in this Title. All orders and decrees of the court or judge must be entered at length in the minute book of the court, and upon the close of each term the judge must sign the minutes.

SEC. 315. When any publication is ordered, such publication must be made daily, or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this Title. The court or judge may, however, order a less number of publications during the period prescribed.

SEC. 316. When it is provided in this Title that any order or decree of a probate court or judge, or a copy thereof, must be recorded in the office of the county recorder, from the time of filing the same for record notice is imparted to all persons of the contents thereof.

SEC. 317. Citations must be directed to the person to be cited, signed by the clerk, and issued under the seal of the court, and must contain:

First. The title of the proceeding.

Second. A brief statement of the nature of the proceeding.

Third. A direction that the person cited appear at a time and place specified.

SEC. 318. The citation may be issued by the clerk, upon the application of any party, without an order of the judge, except in cases in which such order is by the provisions of this Title expressly required.

SEC. 319. The citation must be served in the manner as a summons in a civil action.

SEC. 320. When personal notice is required and no mode of giving it is prescribed in this Title, it must be given by citation.

SEC. 321. When no other time is specially prescribed in this Title, citations must be served at least five days before the return day thereof.

SEC. 322. When a complete description of the real property of an estate sought to be sold has been given and published in a newspaper, as required in the order to show cause why the sale should not be made, such description need not be published in any subsequent notice of sale or notice of a petition for the confirmation thereof; it is sufficient to refer to the description contained in the first notice, as being proved and on file in the court.

SEC. 323. Except as otherwise provided in this Title, the provisions of the Civil Practice Act of this Territory are applicable to and constitute the rules of practice in the proceedings mentioned in this Title.

SEC. 324. The provisions of the Civil Practice Act of this Territory, relative to new trials and appeals, except in so far as they are inconsistent with the provisions of this Title, apply to the proceeding mentioned in this Title.

An appeal may be taken to the district court from a judgment or order of the probate court:

First. Granting, refusing, or revoking letters testamentary, or of administration, or of guardianship.

Second. Admitting, or refusing to admit, a will to probate.

Third. Against or in favor of the validity of a will, or revoking the probate thereof.

Fourth. Against or in favor of setting apart property or making an allowance for a widow or child.

Fifth. Against or in favor of directing the partition, sale, or conveyance of real property.

Sixth. Settling an account of an executor or administrator, or guardian.

Seventh. Refusing, allowing, or directing the distribution or partition of an estate or any part thereof, or the payment of a debt, claim, legacy, or distributive share.

Eighth. Overruling a motion for new trial.

Ninth. Confirming a report of an appraiser setting apart the homestead.

When the order or decree appointing an executor or administrator, or guardian, is reversed, on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor or administrator, or guardian, if he have qualified, are as valid as if such order or decree had been affirmed.

SEC. 325. The appeal must be taken within sixty days after the order, decree, or judgment is entered.

SEC. 326. All issues of fact joined in the probate court must be tried in conformity with the requirements of this Title, and in all such proceedings the party affirming is plaintiff, and the one denying or avoiding is defendant. Judgments therein on the issues joined, as well as for costs, may be entered and enforced by execution or otherwise, by the probate court, as in civil actions.

SEC. 327. If no jury is demanded the court must try the issues joined. If, on written demand, a jury is called by either party, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice to the opposite party, must settle and frame the issues to be tried, and submit the same, together with the evidence of each party, to the jury, on which they must render a verdict. Either may move for a new trial upon the same grounds and errors and in like manner as provided in the Civil Practice Act of this Territory for civil actions.

SEC. 328. At or before the hearing of petitions and contests for the probate of wills, for letters testamentary or of administration; for sales of real estate, and confirmations thereof; settlements, partitions, and distributions of estates; setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be notified thereof, the court may, in its discretion, appoint some competent attorney at law to represent, in all such proceedings, the devisees, legatees, heirs, or creditors of the decedent, who are minors and have no general guardian in the county, or who are non-residents of the Territory, and those interested who, though they are neither such minors or non-residents, are unrepresented. The order must specify the names of the parties for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee, to be fixed by the court, for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and, upon distribution, may be charged to the party represented by the attorney. If, for any cause, it become necessary, the probate court may substitute another attorney for the one first appointed, in which case the fee must be proportionately divided. The non-appointment of an attorney will not affect the validity of any of the proceedings.

SEC. 329. When a judgment or decree is made, setting apart a homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the recorder of the county in which the property is situated.

SEC. 330. When it is not otherwise prescribed in this Title, the probate court, or district court, on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Execution for the costs may issue out of the probate court.

SEC. 331. Whenever an executor, administrator or guardian is committed for contempt in disobeying any lawful order of the probate court, or the judge thereof, and has remained in custody for thirty days without obeying such order, or purging himself otherwise of the contempt, the probate court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint some other person entitled thereto, executor, administrator, or guardian in his stead.

SEC. 332. Whenever an infant, insane or incompetent person, has a guardian of his estate residing in this Territory, personal service upon the guardian of any process, notice, or order of the probate court, concerning the estate of the deceased person, in which the ward is interested, is equivalent to service upon the ward; and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward, and waive any procees, notice, or order to show cause which an adult or a person of sound mind might do.

CHAPTER XIII.

OF PUBLIC ADMINISTRATORS.

Sec. 333. *Estates administered by public administrator.*
Sec. 334. *How to obtain letters, bond, and oath.*
Sec. 335. *Duty of person in whose house a stranger dies.*
Sec. 336. *Duties of public administrator under this Title.*
Sec. 337. *Duty when another administrator appointed.*
Sec. 338. *Civil officers to give him information.*
Sec. 339. *Must institute necessary suits.*
Sec. 340. *Party charged with concealing or embezzling estate must be cited to appear.*
Sec. 341. *Examination and punishment for refusal to appear.*
Sec. 342. *Court may order property turned over to regular administrator.*
Sec. 343. *Semi-annual returns to be made and published.*
Sec. 344. *Moneys to be deposited with county treasurer; his duties and fees, etc.*
Sec. 345. *Public administrator to be entirely disinterested; his affidavit of same.*
Sec. 346. *Monthly accounting with the county clerk.*
Sec. 347. *To pay over unclaimed money to Territorial treasurer; proceedings upon his failure.*

Sec. 348. *Fees of all officers to be paid out of assets of estate.*
Sec. 349. *May administer oaths.*
Sec. 350. *Preceding chapters applicable when no provision in this.*

NOTE.—See Chapter XX., Sections 560 to 566.

SEC. 333. Every public administrator, duly appointed, commissioned, and qualified, must take charge of the estates of persons dying within his county, as follows:

First. Of the estates of decedents for which no administrators are appointed, and which, in consequence thereof, are being wasted, uncared for, or lost.

Second. Of the estate of decedents who leave no known heirs, or are strangers.

Third. Of estates ordered into his hands by the probate court.

Fourth. Of estates upon which letters of administration have been issued to him by the probate court.

SEC. 334. Whenever a public administrator takes charge of an estate, which he is entitled to administer, without letters of administration being issued, or under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in a like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of the administrator's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court.

SEC. 335. Whenever a stranger, or person without known heirs, dies intestate in the house or premises of another, the possessor of the premises, or any one knowing the facts, must give immediate notice thereof to the public administrator of the county; and, in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the administrator or any party interested.

SEC. 336. The public administrator must make and return a perfect inventory of all estates taken into his possession, administer, and account for the same according to the provisions of this Title, subject to the control and direction of the probate court.

SEC. 337. If, at any time, letters testamentary or of administration are regularly granted to any other person on an estate of which the public administrator has charge, he must, under the order of the probate court, account for, pay, and deliver to the executor or administrator thus appointed, all the money, property, papers, and estate of every kind, in his possession or under his control.

SEC. 338. All civil officers must inform the public administrator of all property known to them, belonging to a decedent, which is liable to loss, injury, or waste, and which, by reason thereof, ought to be in the possession of the public administrator.

SEC. 339. The public administrator must institute all suits and prosecutions necessary to recover the property, debts, papers, or other estate of the decedent.

SEC. 340. When the public administrator complains to the probate judge, on oath, that any person has concealed, embezzled, or disposed of, or has in his possession any money, goods, property or effects, to the possession of which such administrator is entitled in his official capacity, the judge may cite such person to appear before the probate court, and examine him on oath touching the matter of such complaint.

SEC. 341. All such interrogations and answers must be reduced to writing and signed by the party examined, and filed in the probate court. If the person so cited refuses to appear and submit to such an examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may commit him to the county jail, there to remain in close custody until he submits to the order of the court.

SEC. 342. The probate court may, at any time, order the public administrator to account for and deliver all the money and property of an estate in his hands to the heirs, or to the executors or administrators regularly appointed.

SEC. 343. The public administrator must, once in every six months, make to the probate judge, under oath, a return of all estates of decedents which have come into his hands, the value of the same, the money which has come into his hands from such estate, and what he has done with it, and the amount of his fees and expenses incurred, and the balance, it any, remaining in his hands, publish the same six times in some newspaper in the county, or, if there is none, then post the same, legibly written or printed, in the office of the county clerk of the county.

SEC. 344. It is the duty of every public administrator, as soon as he shall receive the same, to deposit with the county treasurer of the county in which the probate proceedings are pending, all moneys of the estate not required for the current expenses of the administration; and such moneys may be drawn upon the order of the executor or administrator, countersigned by the probate judge, when required for the purposes of administration. It shall be the duty of the county treasurer to receive and safely keep all such moneys and pay them out upon the order of the executor or administrator, when countersigned by the probate judge, and not otherwise, and to keep an account with each estate of all moneys received and paid to him; and the county treasurer shall be allowed one per cent. upon all moneys received and kept by him, and no greater fees for any services herein provided. The money thus deposited may, upon order of the probate court, be invested, pending the proceedings, in securities of the United States, or if this Territory, when such investment is deemed by the court to be for the best interests of the estate. After a final settlement of the affairs of any estate, if there be no heirs or other claimants thereof, the county treasurer shall pay into the Territorial treasury all moneys and effects in his hands belonging to the estate, upon order of the probate court, and if any such moneys and effects escheat to the Territory, they must be disposed of as other escheated estates.

SEC. 345. The public administrator must not be interested in expenditures of any kind made on account of any estate he administers; nor must he be associated, in business or otherwise, with any one who is so interested, and he must so attach to his report and publication, made in accordance with the preceding section, his affidavit to that effect.

SEC. 346. Public administrators are required to account, under oath, and to settle and adjust their accounts, relating to the care and disbursement of money or property belonging to estates in their hands, with the county clerks of their respective counties, on the first Monday in each month; and they must pay to the Territorial treasurer any money remaining in their hands, of an estate unclaimed, as provided in sections 308 to 311, both inclusive.

Sec. 347. When it appears from the returns made in pursuance of the foregoing sections, that any money remains in the hands of the public administrator (after final settlement of the estate), unclaimed, which should be paid over to the Territorial treasurer, the probate judge must order the same to be paid over to the Territorial treasurer, and, on failure of the public administrator to comply with the order within ten days after the same is made, the district attorney for the county must immediately institute the requisite legal proceedings, against the public administrator, for a judgment against him and the sureties on his official bond, in the amount of money so withheld, and costs.

Sec. 348. The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets thereof so soon as the same come into his hands.

Sec. 349. Public administrators may administer oaths in regard to all matters touching the discharge of their duties or the administration of estates in their hands.

Sec. 350. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties, or for the administration of an estate in his hands, the provisions of the preceding chapters of this Title must govern.

CHAPTER XIV.

ARTICLE I.

GUARDIANS OF MINORS.

Sec. 351. *Petition and notice to appoint a guardian for a minor.*
Sec. 352. *When judge may appoint and minor nominate.*
Sec. 353. *When judge shall have exclusive right to appoint.*
Sec. 354. *Upon arriving at fourteen, minor may choose, subject to approval of judge.*
Sec. 355. *Father or mother; when entitled to be guardian.*
Sec. 356. *When appointed guardian to have custody and tuition of his ward.*
Sec. 357. *For what length of time guardian to have charge.*
Sec. 358. *Bond of guardian; conditions of; oath.*
Sec. 359. *By consent, judge may impose further conditions on guardian.*
Sec. 360. *Letters, bond, certificates, etc., to be recorded.*
Sec. 361. *Maintenance of minor while father living.*
Sec. 362. *Powers and duties of testamentary guardian modified by will.*
Sec. 363. *Power of courts to appoint guardian ad litem not impaired.*

Sec. 351. The probate judge of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either, or both of them, of minors who have no guardian legally appointed by will, or deed, and who are inhabitants or residents of the county, or who reside without the Territory and have estate within the county. Such appointment may be made on the petition of a relative or other person in behalf of such minor. Before making such appointment the judge must cause such notice as he deems reasonable to be given to the relatives of the minor residing in the county, and to any person having care of such minor.

SEC. 352. If the minor is under the age of fourteen years, the probate judge may nominate and appoint his gurdian. If he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the judge, must be appointed accordingly.

SEC. 353. If the guardian nominated by the minor is not approved by the judge, or, if the minor resides out of the Territory, or if after being duly cited by the judge, he neglects for ten days to nominate a suitable person, the judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years.

SEC. 354. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the probate judge.

SEC. 355. The father of the minor, if living, and, in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, must be entitled to the guardianship of the minor.

SEC. 356. If the minor has no father or mother living, competent to have the custody and care of his education, the guardian appointed shall have the custody and tuition of his ward.

SEC. 357. Every guardian appointed shall have the custody and tuition of the minor and the care and management of his estate, until such minor arrives at the age of majority or marries, or until the guardian is legally discharged.

SEC. 358. Before the order appointing any person guardian under this chapter takes effect, and before letters issue, the judge must require of such person a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law; and the following conditions shall form a part of such bond without being expressed therein:

First. To make an inventory of all the estate, real and personal, of his ward, that comes to his possession or knowledge, and to return the same within such time as the judge may order.

Second. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward.

Third. To render an account, on oath, of the property, estate, and moneys of the ward in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court directs, and at the expiration of his trust to settle his accounts with the probate judge, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person or persons who are lawfully entitled thereto.

Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form the letters of guardianship must be substantially the same as letters of administration, and the oath of the guardian must be endorsed thereon, that he will perform the duties of his office as such guardian according to law.

SEC. 359. When any person is appointed guardian of a minor, the probate judge may, with the consent of such person, insert in the order of appointment conditions otherwise obligatory, providing for the care, treatment, education, and welfare of the minor, and to perform such conditions is a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible.

SEC. 360. All letters of guardianship issued, and all guardians' bonds executed, under the provisions of this chapter, with the affidavits and certificates thereon, must be recorded by the clerk of the probate court having jurisdiction of the persons and estates of the wards.

SEC. 361. If any minor, having a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the probate court, and the charges therefor may be allowed accordingly, in the settlement of the accounts of his guardian.

SEC. 362. Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties, with regard to the person and estate of his ward, as guardians appointed by the probate court, except so far as their powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed.

SEC. 363. Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to defend the interest of any minor interested in any suit or matter pending therein.

ARTICLE II.

GUARDIANS OF INSANE AND INCOMPETENT PERSONS.

Sec. 364. *Petition for guardian; hearing and notice.*
Sec. 365. *Appointment of guardian after the hearing.*
Sec. 366. *Powers of guardian; restoration of ward and discharge of guardian.*

SEC. 364. When it is represented to the probate judge, upon verified petition of any relative or friend, that any person is insane, or, from any cause, mentally incompetent to manage his property, the judge must cause a notice to be given to the supposed incompetent person of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing.

SEC. 365. If, after a full hearing and examination upon such petition, it appears to the probate judge that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate, with the powers and duties in this chapter specified.

SEC. 366. Every guardian appointed as provided in the preceding section has the care and custody of the person of his ward, and the management of all his estate, until such guardian is legally discharged, and he must give bond to such ward in like manner and with like conditions as before described with respect to the guardian of a minor.

Any person who has been declared insane, or the guardian or any relative of such person within the third degree, or any friend, may apply, by petition, to the probate judge of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane. Upon receiving the petition the judge must appoint a day for the hearing, and, if the petitioner request it, shall order an investigation before a jury, which shall be summoned and impannelled in the same manner as juries are summoned and impannelled in other cases in the probate court. The judge shall cause notice of the trial to be given to the guardian of the petitioner, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county. On the trial the guardian or relative of the petitioner, and, in the discretion of the judge, any other person may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify as in other cases, and may be called and examined by the judge of his own motion. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease.

ARTICLE III.

POWERS AND DUTIES OF GUARDIANS.

Sec. 367. *Out of what property debts of ward to be paid.*
Sec. 368. *General powers of guardian.*
Sec. 369. *Must manage estate frugally, care for ward and family, and may sell real estate.*
Sec. 370. *Guardian to have credit for advances, may be compelled to perform duty; third party may supply necessaries when guardian neglects.*
Sec. 371. *May join in and assent to partition.*
Sec. 372. *Annual and semi-annual return of inventory of estate.*
Sec. 373. *Annual account of guardian.*
Sec. 374. *Allowance of account of joint guardians.*
Sec. 375. *Expenses and compensation of guardian.*

SEC. 367. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all just debts due from the ward out of his personal estate and the income of his real estate, if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided in this Title for the sale of real estate of decedents.

SEC. 368. Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the probate judge, compound for the same, and give discharges to the debtors on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend.

SEC. 369. Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate upon obtaining an order of the court therefor, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

SEC. 370. When a guardian has advanced for the necessary maintenance, support, or education of his ward, an amount not disproportionate to the value of his estate, or his condition of life, and the same is made to appear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlements. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support, or education for his ward, the court may order him to do so, and enforce such order by proper process. Whenever any third person, at his request, supplies a ward with such suitable and necessary maintenance, support, or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

SEC. 371. The guardian may join in and assent to a partition of the real estate of the ward whenever such assent may be given by any person.

SEC. 372. Every guardian must return to the probate court an inventory of the estate of his ward within three months after his appointment, and annually thereafter. When the value of the estate exceeds the sum of twenty thousand dollars, semi-annual returns must be made to the probate court. The probate court may, upon application made for that purpose by any person, compel the guardian to render an account to the probate court of the estate of his ward. The inventories and accounts so to be returned or rendered must be sworn to by the guardian. All the estate of the ward, described in the first inventory, must be appraised by appraisers appointed, sworn, and acting in the manner provided for regulating the settlement of the estate of decedents; such inventory, with the appraisement of the property therein described, must be recorded by the clerk of the probate court in a proper book kept in his office for that purpose. Whenever any property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward for his benefit, the like proceedings must be had for the return and appraisement thereof that are herein provided in relation to the first inventory and return.

Sec. 373. The guardian must, upon the expiration of a year from the time of appointment, and as often thereafter as he may be required, present his account to the probate court for settlement and allowance.

Sec. 374. When an account is rendered by two or more joint guardians, the probate judge may, in his discretion, allow the sum upon the oath of any of them.

Sec. 375. Every guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deemed just and reasonable.

ARTICLE IV.

THE SALE OF PROPERTY AND DISPOSITION OF PROCEEDS.

Sec. 376. *When real or personal estate may be sold.*
Sec. 377. *When guardian may procure an order to sell real estate.*
Sec. 378. *Application of the proceeds of sales.*
Sec. 379. *Investment of proceeds.*
Sec. 380. *Petition of guardian for order of sale.*
Sec. 381. *Order for next of kin to appear and show cause why sale should not be made.*
Sec. 382. *Service of order to show cause; when not essential.*
Sec. 383. *Hearing of petition.*
Sec. 384. *Examination and attendance of witnesses.*
Sec. 385. *Costs; how awarded when party objects.*
Sec. 386. *Order of sale, either public or private.*
Sec. 387. *Prior to sale, guardian to give bond.*
Sec. 388. *Proceedings, unless otherwise provided in this chapter, to be governed by probate act.*
Sec. 389. *Limitation of order of sale.*
Sec. 390. *Terms of sales and security on deferred payments.*
Sec. 391. *Moneys may be ordered invested on application of guardian or interested party.*

Sec. 376. When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward, when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor.

Sec. 377. When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of his ward his real estate, or some part thereof, should be sold, and the proceeds thereof put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor.

SEC. 378. If the estate is sold for the purposes mentioned in this article, the guardian must apply the proceeds of the sale to such purposes as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward, when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

SEC. 379. If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

SEC. 380. To obtain an order for such sale the guardian must present to the probate court of the county in which he was appointed guardian a verified petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale.

SEC. 381. If it appear to the court or judge, from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court or judge must thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before the court at a time and place therein specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it is necessary, or would be beneficial to the ward, to sell the personal estate or some part of it, the court must order the sale to be made.

SEC. 382. A copy of the order must be personally served on the next of kin of the ward, and all persons interested in the estate, at least fourteen days before the hearing of the petition, or must be published at least three successive weeks in a newspaper published in the county, or if there be none printed in the county, then in such newspaper as may be specified by the court or judge in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served or published.

SEC. 383. The probate court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear and examine the proof and allegations of the petitioner and of the next of kin, and of all other persons interested in the estate who oppose the application.

SEC. 384. On the hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the probate court or judge, in the same manner and with like effect as in other cases provided for in this Title.

SEC. 385. If any person appears and objects to the granting of any order prayed for under the provisions of this article, and it appears to the court that either the petition or the objection thereto is sustained, the court may, in granting or refusing the order, award costs to the party prevailing, and enforce the payment thereof.

SEC. 386. If, after a full examination, it appears necessary, or for the benefit of the ward, that his real estate, or some part thereof, should be sold, the court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made, either at public or private sale.

Sec. 387. Every guardian, authorized to sell real estate must, before the sale, give bond to the probate judge, with sufficient surety, to be approved by him, with conditions to sell the same in the manner, and to account for the proceeds of the sale, as provided for in this chapter and Chapter VII of this Title.

Sec. 388. All the proceedings under the petitions of guardians for sales of property of their wards, giving notice, and the hearing of such petitions, granting or refusing the order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales, and reports of sales, ordering and making conveyances of property sold, accounting and the settlements of accounts, must be had and made as required by the provisions of this Title concerning estates of decedents unless otherwise specially provided in this chapter.

Sec. 389. No order of sale granted in pursuance of this article continues in force more than one year after granting the same, without a sale being had.

Sec. 390. All sales of real estate of wards must be for cash, or for part cash and part deferred payments not to exceed three years, bearing date from date of sale, as in the discretion of the probate judge is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers bond and mortgage on the real estate sold, with such additional security as the judge deems necessary, and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

Sec. 391. The probate court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the probate judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate or in any other manner most to the interest of all concerned therein; and the probate court may make such other orders, and give such directions as are needful for the management, investment, and disposition of the estate and effects as circumstances require.

ARTICLE V.

NON-RESIDENT GUARDIANS AND WARDS.

Sec. 392. *On application of a friend or party interested in his estate, a guardian may be appointed for absent ward.*
Sec. 393. *Same powers as guardians of resident wards.*
Sec. 394. *Bond of such guardian.*
Sec. 395. *Extent of guardianship first lawfully granted.*
Sec. 396. *Removal of property of non-resident ward.*
Sec. 397. *Proceedings necessary for such purpose.*
Sec. 398. *Order for removal discharges local guardian and others.*

Sec. 392. When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this Territory and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the probate judge of any county in which there is any estate of such absent person, for the appointment of a guardian; and if, after notice given to all interested, in such manner as the judge orders, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

Sec. 393. Every guardian appointed under the preceding section has the same powers and performs the same duties with respect to the estate of the ward found within this Territory, and with respect to the person of the ward, if he shall have come to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

Sec. 394. Every guardian must give bond to the ward in the manner and with the like conditions as hereinbefore provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, must be confined to such estate and effects as come to his hands in this Territory.

Sec. 395. The guardianship which is first lawfully granted of any person residing out of this Territory, extends to all the estate of the ward within the same, and excludes the jurisdiction of the probate court of every other county.

Sec. 396. When the guardian and ward are both non-residents, and the ward is entitled to property in this Territory which may be removed to another State or Territory or foreign country, without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the State or Territory or foreign country of the residence of the ward, upon the application of the guardian to the probate judge of the county in which the estate of the ward, or the principal part thereof, is situated.

Sec. 397. The application must be made upon ten days notice to the resident executor, administrator, or guardian, if there be such, and, upon such application, the non-resident guardian must produce and file a certificate, under the hand of the clerk, and seal of the court from which his appointment was derived, showing:

First. A transcript of the record of his appointment.

Second. That he has entered upon the discharge of his duties.

Third. That he is entitled, by the laws of the State or Territory of his appointment, to the possession of the estate of his ward; or, must produce and file a certificate, under the hand and seal of the clerk of the court having jurisdiction in the country of his residence of the estates of persons under guardianship, or of the highest court of such country, that, by the laws of such country, the applicant is entitled to the custody of the estate of his ward without the appointment of any court.

Upon such application, unless good cause to the contrary is shown, the probate judge must make an order granting to such guardian leave to take and remove the property of his ward to the State or place of his residence, which is authority to him to sue for and receive the same in his own name, for the use and benefit of his ward.

SEC. 398. Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the probate court the receipt therefor, of the guardian of such absent ward.

ARTICLE VI.

GENERAL AND MISCELLANEOUS PROVISIONS.

Sec. 399. *Examination of persons suspected of concealing or embezzling property of ward.*
Sec. 400. *Of removal and resignation of guardians.*
Sec. 401. *Guardianship; how terminated.*
Sec. 402. *When new bond given and sureties discharged.*
Sec. 403. *Guardian's bond filed and breach of, prosecuted.*
Sec. 404. *Limitation of action on guardian's bond.*
Sec. 405. *Limitation of action to recover estate sold by guardian.*
Sec. 406. *More than one guardian may be appointed.*
Sec. 407. *Power of probate judge at chambers.*
Sec. 408. *Justification of sureties.*

SEC. 399. Upon complaint made to him by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects, or an instrument in writing belonging to the ward, or to his estate, the probate judge may cite such suspected person to appear before him, and may examine and proceed with him on such charge in the manner provided in this Title with respect to persons suspected of, and charged with, concealing or embezzling the effects of decedent.

SEC. 400. When a guardian, appointed either by the testator or the probate judge becomes insane or otherwise incapable of discharging his trust, or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the probate court may, upon such notice to the guardian as the court may require, remove him, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign, when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the probate court, or the judge thereof, may appoint another in the place of the guardian who has resigned or has been removed.

SEC. 401. The marriage of a minor ward terminates the guardianship, and the guardian of an insane or other person may be discharged by the probate judge when it appears to him, on the application of the ward or otherwise, that the guardianship is no longer necessary.

SEC. 402. The probate judge may require a new bond to be given by a guardian whenever he deems it necessary, and may discharge the existing sureties from further liability, after due notice given as he may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

SEC. 403. Every bond given by a guardian must be filed and preserved in the office of the clerk of the probate court of the county, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward, or of any person interested in the estate.

SEC. 404. No action can be maintained against the sureties on any bond given by a guardian unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of the discharge or removal of the guardian the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

SEC. 405. No action for the recovery of any estate, sold by a guardian, can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal thereof.

SEC. 406. The court, in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and liable in all respects as a sole guardian.

SEC. 407. The power conferred upon the probate judge in relation to guardians and wards may be exercised by him at chambers, or as the act of the probate court, when holding such court; and any order appointing a guardian must be entered as, and become, a decree of the court. The provisions of this Title relative to the estates of decedents, so far as they relate to the practice in the probate or district courts, applies to proceedings under this chapter.

SEC. 408. The provisions of the Civil Practice Act relating to the justification of sureties, are hereby declared to apply to guardians appointed by the court, and to the bonds taken or to be taken from such guardians, and to the sureties on such bonds.

CHAPTER XV.

GUARDIAN AND WARD.

Sec. 409. *Guardian defined.*
Sec. 410. *Ward defined.*
Sec. 411. *Kinds of guardian.*
Sec. 412. *General guardian defined.*
Sec. 413. *Special guardian defined.*
Sec. 414. *When guardian appointed by will or deed.*
Sec. 415. *Guardian of property no power except as herein provided.*
Sec. 416. *Guardian of person or estate appointed in certain cases.*
Sec. 417. *Appointed by probate court.*
Sec. 418. *Exclusive jurisdiction of court.*
Sec. 419. *Considerations governing in the appointment.*
Sec. 420. *Power of guardian appointed by court.*
Sec. 421. *Duties of guardian.*
Sec. 422. *Duty of guardian of property.*

Sec. 423. *Relation of guardian and ward.*
Sec. 424. *May be controlled by court.*
Sec. 425. *Power of surviving guardian.*
Sec. 426. *Causes for removal of guardian.*
Sec. 427. *When power of guardian superseded.*
Sec. 428. *When power suspended only.*
Sec. 429. *Ward attaining majority may settle with guardian.*
Sec. 430. *When guardian entitled to release.*
Sec. 431. *In what cases and how an insane ward may be placed in asylum.*

SEC. 409. A guardian is a person appointed to take care of the person or property of another.

SEC. 410. The person over whom or over whose property a guardian is appointed is called his ward.

SEC. 411. Guardians are either general or special.

SEC. 412. A general guardian is the guardian of the person or of all the property of the ward within this Territory, or both.

SEC. 413. Every other is a special guardian.

SEC. 414. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

First. If the child be legitimate, by the father, with the written consent of the mother, or by either parent, if the other be dead or incapable of consent.

Second. If the child be illegitimate, by the mother.

SEC. 415. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

SEC. 416. A guardian of the person or property, or both, of a person residing in this Territory, who is a minor, or of unsound mind, may be appointed in all cases other than those named in sections 351, 364, and 392, by the probate court, as provided in the Code of Civil Procedure.

SEC. 417. A guardian of the property within this Territory of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the probate court.

SEC. 418. In all cases the court first making the appointment of a guardian has the exclusive jurisdiction to control him.

SEC. 419. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

First. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and, if the child be of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question.

Second. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but, other things being equal, if the child is of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

Third. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

1. To a parent.
2. To one who was indicated by the wishes of a deceased parent.
3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.
4. To a relative.

SEC. 420. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

SEC. 421. A guardian of the person is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place in this Territory, but not elsewhere, without permission of the court.

SEC. 422. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the probate court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward at the close of his guardianship, in as good condition as he received it.

SEC. 423. The relation of guardian and ward is confidential, and is subject to trusts at common law.

SEC. 424. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

SEC. 425. On the death of one of two or more joint guardians, the power continues to the survivor, until a further appointment is made by the court.

SEC. 426. A guardian may be removed by the probate court for any of the following causes:

First. For abuse of his trust.

Second. For continued failure to perform its duties.

Third. For incapacity to perform its duties.

Fourth. For gross immorality.

Fifth. For having an interest averse to the faithful performance of his duties.

Sixth. For removal from the Territory.

Seventh. In the case of a guardian of the property, for insolvency; or,

Eighth. When it is no longer proper that the ward should be under guardianship.

SEC. 427. The power of a guardian appointed by a parent is superseded:

First. By his removal, as provided in the preceding section;

Second. By a solemnized marriage of the ward; or,

Third. By the ward's attaining majority.

SEC. 428. The power of a guardian appointed by a court is suspended only:

First. By order of the court; or,

Second. If the appointment was made solely because of the ward's minority, by his attaining majority; or,

Third. The guardianship over the ward, by the marriage of the ward.

Sec. 429. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

Sec. 430. A guardian appointed by the court is not entitled to his discharge until one year after the ward's majority.

Sec. 431. Any ward of unsound mind may be placed in an asylum for such person, upon the order of the probate judge of the county in which he resides, as follows:

First. The judge must be satisfied by the oath of two reputable physicians that such person is of unsound mind and unfit to be at large.

Second. Before granting the order the judge must examine the person himself; or, if that is impracticable, cause him to be examined by an impartial person.

Third. After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, may demand an investigation before a jury, which must be conducted in all respects as under an inquisition of lunacy.

When an infant is a party, he must appear either by his general guardian, if he have one, or by a guardian appointed by the justice, as follows:

First. If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, upon the application of a relative or friend.

Second. If the infant be defendant, the guardian must be appointed at the time the summons is returned, or before the answer. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age; otherwise the justice must make the appointment.

CHAPTER XVI.

EXECUTION AND REVOCATION OF WILLS.

Sec. 432. *Who may make and what may be devised by will.*
Sec. 433. *Incompetent persons.*
Sec. 434. *What wills voidable.*
Sec. 435. *Will of married woman.*
Sec. 436. *What estate may be devised.*
Sec. 437. *Who may and who may not take by will.*
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Sec. 439. *Olographic will defined.*
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Sec. 443. *Conditional will.*
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Sec. 447. *The law of the domicil at time of making will controls.*
Sec. 448. *Effect of codicil is to re-publish.*
Sec. 449. *Nuncupative will.*
Sec. 450. *Requisites of nuncupative will.*
Sec. 451. *Limitation to probate of.*
Sec. 452. *When and under what conditions it may be proved.*
Sec. 453. *When and how written will may be revoked or altered.*
Sec. 454. *Cancellation or destruction of a will; how proven.*
Sec. 455. *Revocation of will executed in duplicate.*
Sec. 456. *How prior will affected by a subsequent one.*
Sec. 457. *Effect of destruction of subsequent will.*
Sec. 458. *Effect of after marriage or issue after execution of will.*
Sec. 459. *Effect of survival of wife of marriage after execution of will.*
Sec. 460. *Will of unmarried woman revoked by marriage.*
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Sec. 463. *Effect upon will of a conveyance or other act.*
Sec. 464. *Requisites of instrument amounting to a revocation.*
Sec. 455. *Revocation of will revokes codicils.*
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Sec. 469. *Of advancement to a child.*
Sec. 470. *Lineal descendants take the share given to devisee.*
Sec. 471. *Devise conveys all the estate of devisor in the thing devised.*
Sec. 472. *After-acquired property passes by the will.*
Sec. 473. *Restrictions to devises to benevolent and charitable institutions.*

SEC. 432. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is subject to succession, as provided for by Chapter XIX of this Act, as the estate of an intestate, being chargeable in both cases with the payment of all the decedent's debts, as provided in this act.

SEC. 433. A person having an insane delusion is incompetent to make a will.

SEC. 434. A will or part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

SEC. 435. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

SEC. 436. Every estate and interest in real or personal property to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will, except as otherwise provided in sections 133 to 140, both inclusive.

SEC. 437. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, can not take under a will, unless expressly authorized by statute.

SEC. 438. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will and a nuncupative will, must be executed and attested, as follows:

First. It must be subscribed at the end thereof by the testator himself, or some person in his presence, and, by his direction, must subscribe his name thereto.

Second. The subscription must be made in the presence of each of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority.

Third. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

Fourth. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request and in his presence.

SEC. 439. An olographic will is one that is entirely written, dated and signed by the hand of the testator himself; it is subject to no other form, and may be made in or out of this Territory, and need not be witnessed.

SEC. 440. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

SEC. 441. A conjoint or mutual will is valid; but it may be revoked by any of the testators, in like manner with any other will.

SEC. 442. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily provided.

SEC. 443. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the conditions.

SEC. 444. All beneficial devises, legacies and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of a testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

SEC. 445. If a witness to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will; and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

SEC. 446. A will of real or personal property, or both, or a revocation thereof, made out of this Territory by a person not having his domicile in this Territory, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this Territory, and according to the provisions of this chapter.

SEC. 447. Whenever a will or a revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated, as to the validity of its execution, by the law of such place, notwithstanding the testator subsequently changed his domicile to a place by the law of which such will would be void.

SEC. 448. The execution of a codicil referring to a previous will has the effect to republish the will, as modified by the codicil.

SEC. 449. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

SEC. 450. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

First. The estate bequeathed must not exceed in value the sum of one thousand dollars.

Second. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect.

Third. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and, in either case, in actual contemplation, fear or peril of death; or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

SEC. 451. No proof must be received of any nuncupative will unless it is offered within six months after speaking the testamentary words, nor unless the words or the substance thereof were reduced to writing within thirty days after they were spoken.

SEC. 452. No probate of any nuncupative will must be granted for fourteen days after the death of the testator; nor must any nuncupative will be at any time proved unless the testamentary words or the substance thereof be first committed to writing and process issued to call in the widow or other persons interested, to contest the probate of such will, if they think proper.

SEC. 453. Except in cases in this chapter mentioned, no written will nor any part thereof can be revoked or altered otherwise than:

First. By a written will or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

Second. By being burnt, torn, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence, and by his direction.

SEC. 454. When a will is cancelled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction, must be proved by two witnesses.

SEC. 455. The revocation of a will executed in duplicate may be made by revoking one of the duplicates.

SEC. 456. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation or provision wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

SEC. 457. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or, unless, after such destruction, cancellation or revocation, the first will is duly republished.

Sec. 458. If, after having made a will, the testator marries and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provisions have been made for such issue by some settlement, or, unless such issue is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Sec. 459. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided in the will, or in such way mentioned therein, as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

Sec. 460. A will executed by an unmarried woman is revoked by her subsequent marriage, and is not revived by the death of her husband.

Sec. 461. An agreement made by a testator for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal, but the property passes by the will, subject to the same remedies on the testator's agreement for a specific performance, or otherwise, against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Sec. 462. A charge of incumbrance upon any estate for the purpose or securing payment of money, or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or incumbrance.

Sec. 463. A conveyance, settlement, or other act of a testator by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

Sec. 464. If the instrument by which an alteration is made of the testator's interest in a thing previously disposed of by his will, expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

Sec. 465. The revocation of a bill revokes all its codicils.

Sec. 466. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for, nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

Sec. 467. When a testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

SEC. 468. When any share of the estate of the testator is assigned to a child born after the making of a will, or to a child or to the issue of a child omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will would thereby be defeated; in such case such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

SEC. 469. If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

SEC. 470. When any estate is devised to any child or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

SEC. 471. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

SEC. 472. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby, and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

SEC. 473. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except the same be done by will, duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them, shall be valid: *Provided*, That no such devises or bequests shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a *pro rata* deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law.

CHAPTER XVII.

INTERPRETATION OF WILLS AND EFFECT OF VARIOUS PROVISIONS.

Sec. 474. *Construction of will.*
Sec. 475. *In cases of uncertainty, how construed.*
Sec. 476. *Rules of this chapter to be observed.*
Sec. 477. *Several testamentary instruments construed as one.*

Sec. 478. *Parts construed in relation to each other.*
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Sec. 505. *When a condition precedent is deemed performed.*
Sec. 506. *Condition subsequent defined.*
Sec. 507. *Devise or legacy to owners in common.*
Sec. 508. *Advancements or gifts as redemptions.*

Sec. 474. A will is to be construed according to the intention of the testator. When his intentions can not have effect to its full extent, it must have effect as far as possible.

Sec. 475. In case of uncertainty arising upon the face of a will as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

Sec. 476. In interpreting a will, subject to the law of this Territory, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears:

Sec. 477. Several testamentary instruments, executed by the same testatator, are to be taken and construed together as one instrument.

Sec. 478. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistant whole; but where several parts are absolutely irreconcilable the latter must prevail.

Sec. 479. A clear and distinct devise or bequest can not be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of, or reference to, its contents in another part of the will.

SEC. 480. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

SEC. 481. The words of a will are to be taken in their ordinary and gramatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

SEC. 482. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

SEC. 483. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

SEC. 484. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

SEC. 485. Technical words are not necessary to give effect to any species of disposition by a will.

SEC. 486. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

SEC. 487. Real or personal property embraced in a power to divise, passes by a will purporting to devise all the real or personal property of the testator.

SEC. 488. A devise or bequest of all the testator's real or personal property, in express terms or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

SEC. 489. A devise of residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

SEC. 490. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

SEC. 491. A testamentary disposition to "heirs," relatives, nearest relations, "representatives," legal representatives, or personal representatives, or family, issue, descendants, nearest or next of kin, of any person without other words of qualification, and when the terms are used as words of donation and not of limitation, vests the property in those who would be entitled to succeed to the property of such persons according to the provisions of the Title on successions in this code.

SEC. 492. The terms mentioned in the last section are used as words of donation and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

SEC. 493. Words in a will referring to death or survivorship simply relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

SEC. 494. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period it includes also all persons coming within the description before the time to which possession is postponed.

SEC. 495. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

SEC. 496. A child conceived before but not born until after a testator's death, or any other period when a disposition to a class vests in right or possession, takes, if answering to the description of the class.

SEC. 497. When applying a will it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will, or from extrinsic evidence; but evidence of the declarations of a testator as to his intentions can not be received.

SEC. 498. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

SEC. 499. A testamentary disposition when vested, can not be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

SEC. 500. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section 501.

SEC. 501. The death of a devisee or legatee of a limited interest, before the testator's death, does not defeat the interests of persons in remainder, who survive the testator.

SEC. 502. A conditional disposition is one which depends upon the occurrence of some uncertain event by which it is either to take effect or be defeated.

SEC. 503. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

SEC. 504. When a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except when such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

SEC. 505. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

SEC. 506. A condition subsequent is when an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

SEC. 507. A devise or legacy given to more than one person vests in them as owners in common.

SEC. 508. Advancements or gifts are not to be taken as redemptions of general legacies, unless such intention is expressed by the testator, in writing.

CHAPTER XVIII.

GENERAL PROVISIONS.

Sec. 509. *Distinguishment and designation of legacies.*
Sec. 510. *All property charged with payment of debts except.*
Sec. 511. *The order in which property resorted to for paying debts.*
Sec. 512. *The order in which property resorted to for paying legacies.*
Sec. 513. *Legacies to relations chargeable after legacies to others.*
Sec. 514. *Abatement between legacies.*
Sec. 515. *Of specified devise or legacy.*
Sec. 516. *When right of purchaser or incumbrancer is and is not impaired by devise.*
Sec. 517. *Specific legacies for life only.*
Sec. 518. *When bequest of income accrues.*
Sec. 519. *Legacy or gift in contemplation of death.*
Sec. 520. *Legacies and annuities; when due and to commence.*
Sec. 521. *Legacies bear interest.*
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Sec. 523. *When person not named as executor is entitled to letters.*
Sec. 524. *Authority to an executor to appoint an executor is void.*
Sec. 525. *Powers of executor before qualifying.*
Sec. 526. *When provisions of this Title to take effect.*
Sec. 527. *Not to affect validity or construction of wills made prior.*
Sec. 528. *Law of this Territory to govern.*
Sec. 529. *Laws governing as to real and personal property.*
Sec. 530. *Liability of persons taking under the will.*

Sec. 509. Legacies are distinguished and designated according to their nature, as follows:

First. A legacy of a specific thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort can not be had to the other property of the testator.

Second. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.

Third. An annuity is a bequest of certain specific sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in a case of general legacy.

Fourth. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

Fifth. All other legacies are general legacies.

Sec. 510. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the Code of Civil Procedure.

Sec. 511. The property of a testator, except as otherwise specially provided for in this code and the Code of Civil Procedure, must be resorted to for the payment of debts, in the following order:

First. The property which is expressly appropriated by the will for the payment of the debts;

Second. Property not disposed of by the will;

Third. Property which is devised or bequeathed to a residuary legatee;

Fourth. Property which is not specifically devised or bequeathed; and,

Fifth. All other property ratably.

Before any debts are paid the expenses of the administration and the allowance to the family must be paid or provided for.

Sec. 512. The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order:

First. The property which is expressly appropriated by the will for the payment of the legacies.

Second. Property not disposed of by the will.

Third. Property which is devised or bequeathed to a residuary legatee.

Fourth. Property which is not specifically devised or bequeathed.

Sec. 513. Legacies to husband, widow, or kindred of any class, are chargeable only after legacies to persons not related to the testator.

Sec. 514. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

Sec. 515. In a specified devise or legacy, the title passes by the will; but possession can only be obtained from the personal representative, and he may be authorized by the judge of the probate court to sell the property devised and bequeathed in the cases herein provided.

Sec. 516. The rights of a purchaser or incumbrancer of real property, in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the probate court having jurisdiction thereof, or unless written notice of such devise is filed with the clerk of the county where the real property is situated, within four years after the devisor's death.

Sec. 517. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that on his decease it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

Sec. 518. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

Sec. 519. A legacy or a gift in contemplation, fear, or peril of death, may be satisfied before death.

Sec. 520. Legacies are due and deliverable at the expiration of one year after the testator's death; annuities commence at the testator's decease.

Sec. 521. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

Sec. 522. The four preceding sections are in all cases to be controlled by the testator's express intention.

SEC. 523. When it appears by the terms of a will that it was the intention of the testator to commit the execution thereof, and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary, in like manner as if he had been named executor.

SEC. 524. An authority to an executor to appoint an executor is void.

SEC. 525. No person has any power as an executor, until he qualifies, except that before letters have been issued he may pay funeral charges and take necessary measures for the preservation of the estate.

SEC. 526. The provisions of this Title in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect.

SEC. 527. The provisions of this Title do not impair the validity of the execution of any will made before it takes effect, or affect the construction of any such will.

SEC. 528. The validity and interpretation of wills, wherever made, are governed, when relating to property within this Territory, by the law of this Territory.

SEC. 529. Except as otherwise provided, the validity and interpretation of wills are governed, when relating to real property within this Territory, by the law of this Territory; when relating to personal property, by the law of the testator's domicile.

SEC. 530. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the Code of Civil Procedure.

CHAPTER XIX.

SUCCESSIONS.

Sec. 531. *Succession defined.*
Sec. 532. *Property of intestate passes to heirs.*
Sec. 533. *Personal representatives defined.*
Sec. 534. *Distribution of and order of succession to property of intestate.*
Sec. 535. *Of escheats to the Territory.*
Sec. 536. *When an illegitimate child is an heir.*
Sec. 537. *Succession to property of illegitimate child.*
Sec. 538. *Degree of kindred defined.*
Sec. 539. *Lineal and collateral consanguinity.*
Sec. 540. *Direct line, ascending and descending.*
Sec. 541. *Degrees in direct line.*
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Sec. 543. *Inheritance of kindred of the half blood.*
Sec. 544. *Advancements are part of the estate.*
Sec. 545. *When advancement exceeds share; heir not to refund.*
Sec. 546. *What are advancements.*
Sec. 547. *Value of advancement; how estimated.*
Sec. 548. *Advancements to be considered when heir dies before decedent and leaves children.*
Sec. 549. *Application of proceeding sections to husband and wife.*

Sec. 550. *Who succeeds on death of wife.*
Sec. 551. *Succession and distribution on death of husband.*
Sec. 552. *Inheritance or succession by right of representation.*
Sec. 553. *Right of succession of aliens.*
Sec. 554. *Proceedings if property not claimed under last section.*
Sec. 555. *Proceedings when so claimed.*
Sec. 556. *Real property escheating subject to same charges as other property.*
Sec. 557. *Obligations of successors to decedent.*
Sec. 558. *Repealing clause.*
Sec. 559. *When act to take effect.*

Sec. 531. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

Sec. 532. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purposes of administration.

Sec. 533. The personal representative of the decedent within the meaning of that phrase as used in the preceding section, is the duly qualified and acting executor, administrator, or administrator with the will annexed, of the estate of the decedent.

Sec. 534. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

First. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of his representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and to the issue of the deceased child or children by right of representation.

Second. If the decedent leave no issue, then the estate goes in equal shares to the surviving husband or wife, and to the decedent's father. If there be no father, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If he leave a mother also, she takes an equal share with the brothers and sisters. If the decedent leave no issue, nor husband nor wife, the estate must go to the father.

Third. If there be no issue, nor husband, nor wife, nor father, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If a mother survive, she takes an equal share with the brothers and sisters.

Fourth. If the decedent leave no issue, nor husband, nor wife, nor father, and no brother nor sister is living at the time of his death, the estate goes to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters.

Fifth. If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole goes to the surviving husband or wife.

Sixth. If the decedent leave no issue, nor husband nor wife, and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote; however,

Seventh. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Eighth. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent, descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

SEC. 535. If the decedent leave no husband, wife or kindred, the estate escheats to the Territory.

SEC. 536. Every illegitimate child is an heir of the person who, in writing signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if it had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family, in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate and without issue, the others inherit his estate, and an heir, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

Sec. 537. If an illegitimate child who has not been acknowledged or adopted by his father, dies intestate without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law.

Sec. 538. The degree of kindred is established by the number of generations, and each generation is called a degree.

Sec. 539. The series of degrees forms the line; the series of degrees between persons who descend from one another, is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancester, is called the collateral line, or collateral consanguinity.

Sec. 540. The direct line is divided into a direct line descending, and a direct line ascending. The first is that which connects the ancestor with those who descend from him; the second is that which connects a person with those from whom he descends.

Sec. 541. In the direct line there are as many degrees as there are generations. Thus, the son is with regard to the father in the first degree; the grandson in the second; and *vice versa* with regard to the father and grandfather, towards the sons and grandsons.

Sec. 542. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. On such computation the decedent is excluded, the relation included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins-german in the fourth, and so on.

Sec. 543. Kindred of the half-blood inherit equally with those of the whole blood in the same degree, unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance.

Sec. 544. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child or other lineal descendant towards his share of the estate of the decedent.

Sec. 545. If the amount of such advancements exceeds the share of the heir receiving the same, he must be excluded from receiving any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

Sec. 545. All gifts and grants are made as advancements, if expressed in the gift or grant to be made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such by the child, or other successor or heir.

Sec. 547. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof, made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value, in the division and distribution of the estate, otherwise it must be estimated according to its value when given, as nearly as the same can be ascertained.

SEC. 548. If any child or other lineal descendant, receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancements had been made directly to them.

SEC. 549. The provisions of the preceding section of this Title as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedent.

SEC. 550. Upon the death of the wife the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree for her support and maintenance, which portion is subject to her testamentary disposition; and in the absence of such disposition goes to her descendants or heirs, exclusive of her husband.

SEC. 551. Upon the death of the husband one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband; and in the absence of such disposition goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent, otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

SEC. 552. Inheritance or succession "by right of representation" takes place when the descendants of any deceased take the same show, or right, in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

SEC. 553. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this Title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession, unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

SEC. 554. When succession is not claimed as provided in the preceding section, the district court, on information, must direct the district attorney of the district in which the property is situated to reduce the property to his or the possession of the Territory, or to cause the same to be sold, and the same or the proceeds thereof to be deposited in the Territorial treasury for the benefit of such non-resident foreigner or his legal representatives, to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the Territorial auditor and treasurer is produced that he is entitled to succeed thereto.

SEC. 555. When so claimed, the evidence and the joint order of the auditor and treasurer must be filed by the treasurer as his voucher, and the property delivered, or the proceeds paid to the claimant on filing his receipt therefor. If no one succeeds to the estate or proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the Territory, and is placed by the Territorial treasurer to the credit of the general fund.

SEC. 556. Real property passing to the Territory under the last section, whether held by the estate or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession.

SEC. 557. Those who succeed to the property of a decedent are liable for his obligations, in the cases and to the extent prescribed by the laws of this Territory.

SEC. 558. That an act entitled "An act in relation to administrators and executors" (general and miscellaneous laws), codified statutes, save and except sections 293, 294, 295, 296, 297, 298, and 299 thereof, be and the same are hereby repealed: *Provided*, That the provisions of said act shall be and remain in force so far as, and shall be applicable to, all estates now in course of administration, and upon which letters testamentary or administration have issued to the settlement and winding up of such estates, and the discharge of the executor and administrator therein, so far as such act may be applicable and provide for; but in any matter or thing for which said act may contain no provision the provisions of this act shall be applicable.

SEC. 559. This act shall take effect on the first day of July, A. D. 1877, and the act mentioned in the last preceding section shall continue in force until the date last aforesaid.

NOTE.—The foregoing 559 sections, except where otherwise specially noted, are taken from the Act of February 16th, 1877.

CHAPTER XX.

PUBLIC ADMINISTRATOR.

[*See Chapter XIII.*]

Sec. 560. *Probate court may appoint public administrator; term of office.*
Sec. 561. *Public administrator to make oath and give bond; unless given within twenty days, may be removed.*
Sec. 562. *Certificate of appointment, oath, and bond to be filed and recorded in county recorder's office and office of probate court; certificate thereof to be evidence.*
Sec. 563. *Persons injured may sue on bond in the name of the Territory.*
Sec. 564. *Public administrator removed for what causes.*
Sec. 565. *What compensation for services.*
Sec. 566. *When may he be indicted and fined.*

SEC. 560. Each probate court, or court having probate jurisdiction, in any county, may appoint a public administrator for its county, who shall hold his office for two years, and until his successor in office be qualified.

SEC. 561. Before entering on the duties of his office he shall take oath faithfully and honestly to discharge the duties thereof, and shall enter into bond to the people of the Territory of Montana, in a sum not less than ten thousand dollars, with two or more securities approved by said court, conditioned that he will faithfully discharge all the duties of his office, and the court may from time to time, as occasion shall require, demand additional security of such administrator, and, in default of giving the same within twenty days after required, may remove said administrator and appoint another.

Sec. 562. His certificate of appointment, official oath, and bond, shall be filed and recorded in the recorder's office of the county, also in the office of the probate court, and copies thereof from either, certified under the seal of such court, or from the recorder's office under his seal, shall be evidence.

Sec. 563. Any person injured by the breach of such bond may sue upon the same, in the name of the people of the Territory of Montana, for his own use in any court having jurisdiction.

Sec. 564. Such public administrator may be removed from office in the same manner and for the same causes as administrators in other cases.

Sec. 565. He shall receive the same compensation for his services as may be allowed by law to executors and administrators, unless the court for special reasons allow a higher compensation.

Sec. 566. For any willful misdemeanor in office he may be indicted, and fined not exceeding one thousand dollars, and may be imprisoned until such fine and costs are paid.

Note.—The last seven sections are taken from the Act of January 12th, 1872.

CHAPTER XXI.

MINOR HEIRS—COSTS.

Sec. 567. That any minor heir or heirs, either resident or non-resident of this Territory, may commence and prosecute any suit or suits against any executor or administrator, and sureties upon the bond of such executor or administrator, by attorney or next friend, and without the pre-payment of costs, or security therefor; but such minor shall not be relieved from liability to pay such costs, and the same shall be a lien upon any judgment on property he may recover in such action, and it is hereby made the duty of the officers of the courts to issue all writs and serve the same without demanding or receiving their fees in advance.

Sec. 568. That to entitle any such minor heir so to sue, it shall appear by the affidavit of his or her attorney or next friend, that such heir has a good cause of action and is unable to pay the costs in money or to procure security therefor.

Note.—Act February 11th, 1876.

THIRD DIVISION.

CRIMINAL PRACTICE ACT

CHAPTER I.

ELEMENTARY PRINCIPLES.

Sec. 1. *Criminal action defined.*
Sec. 2. *Criminal actions prosecuted in name of the Territory; accused known as defendant.*
Sec. 3. *Crimes classified.*
Sec. 4. *Distinction between misdemeanors and felonies.*
Sec. 5. *Prosecutions; how conducted before justice of the peace and in probate and district court.*
Sec. 6. *Criminal jurisdiction of justice of the peaee, probate court, and district court defined.*
Sec. 7. *Where cause shall be tried in case of concurrent jurisdiction.*
Sec. 8. *How person convicted of felony.*
Sec. 9. *Rights of defendant in criminal action.*
Sec. 10. *Person once duly convicted or acquitted not subject to second prosecution.*
Sec. 11. *No person compelled to criminate himself.*
Sec. 12. *Restraint to which accused shall be subjected.*

SEC. 1. The proceedings by which a party charged with a public offence is accused, and tried therefor, shall be known as a criminal action.

SEC. 2. All criminal actions shall be prosecuted in the name of the Territory of Montana. The person accused and prosecuted for the commission of a public offence shall be known as the defendant.

SEC. 3. All crimes are divided into misdemeanors and felonies.

SEC. 4. Crimes which do not subject the offender to imprisonment in the Territorial prison, or to death, shall be classed as misdemeanors. Crimes which subject the offender to imprisonment in the Territorial prison, or to death, shall be classed as felonies.

SEC. 5. All prosecutions conducted in the district court shall be by indictment. Prosecutions in the probate court, or justice of the peace courts, shall be by complaint.

SEC. 6. That the district and probate courts shall have concurrent jurisdiction of all misdemeanors for the county in which they shall be qualified to act when the punishment therefor does not exceed a fine of five hundred dollars, or imprisonment for six months in the county jail, or by both such fine and imprisonment; but nothing in said act shall deprive the district court of jurisdiction over such misdemeanor, as the grand jury may, of its own motion, take cognizance of.

NOTE.—Act February 11th, 1876.

No justice of the peace or other magistrate in this Territory, shall acquire jurisdiction over the person of a defendant, to finally try such defendant, by reason of the complaint of such defendant made against himself, nor by reason of any complaint which such defendant may procure to be made against himself.

NOTE.—Act February 3d, 1874.

SEC. 7. When two or more courts have concurrent jurisdiction over the same offence, the cause shall be tried in that one in which the prosecution shall be first commenced: *Provided*, That nothing in this section shall be so construed as to prevent a change of venue from one court to another.

SEC. 8. No person can be convicted of a felony, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty.

SEC. 9. In a criminal action, the defendant is entitled:

First. To a speedy and public trial.

Second. To be allowed counsel.

Third. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court.

SEC. 10. No person shall be subject to a second prosecution of a public offence for which he has once been prosecuted and put in jeopardy, and duly convicted or acquitted.

SEC. 11. No person shall be compelled, in a criminal action, to be a witness against himself.

SEC. 12. No person charged with a public offence shall be subject before conviction to any more restraint than is necessary for his detention to answer the charge.

CHAPTER II.

PREVENTION OF PUBLIC OFFENCES.

Sec. 13. *When person may lawfully resist commission of public offence.*
Sec. 14. *Duty of sheriff and other public officers to command peace and arrest offenders.*
Sec. 15. *Duty of magistrate to arrest offenders in certain cases.*
Sec. 16. *Duty of magistrates and other officers to disperse unlawful assemblies; power to arrest.*
Sec. 17. *Governor to order necessary force, in certain cases, to execute process or quell riots.*
Sec. 18. *Power of mayor or other officer to keep peace of city or town.*
Sec. 19. *Sheriff to command assistance to execute process.*
Sec. 20. *Magistrates to preserve the peace.*
Sec. 21. *Duty of magistrates on complaint made of threats against person or property.*
Sec. 22. *If reason to fear commission of offence, shall issue warrant to arrest, etc.*
Sec. 23. *Duty of magistrate when offender brought before him.*
Sec. 24. *If cognizance given, offender discharged; refusal to give, committed to jail.*

Sec. 25. *Person committed for want of bail, released upon giving bail.*
Sec. 26. *Duty of district attorney where recognizance is violated.*
Sec. 27. *Costs taxed against complaint; when.*
Sec. 28. *When costs taxed against complaint he may appeal to district court.*
Sec. 29. *Duty of district court on appeal.*

Sec. 13. Lawful resistance to the commission of a public offence may be made as follows: Any one against whose person, family, or property an offence is threatened and about to be committed, may make sufficient resistance to prevent the commission thereof; or to prevent an illegal attempt by force to take or injure property in his lawful possession. Any other person in aid of him, against whose person, family, or property an offence is threatened and about to be committed, may assist in making sufficient resistance to prevent the perpetration of the offence.

Sec. 14. Any sheriff, constable, or public officer in whose presence any breach of the peace is threatened and about to be committed, may command the peace; and if the person threatening and about to commit the breach of the peace persist in committing the offence, it shall be the duty of such officer to arrest him and take him before the nearest magistrate and make complaint of him for such violation of law.

Sec. 15. If any person threaten and be about to commit any breach of the peace in the presence of any magistrate, it shall be lawful for him to arrest such offender, and without further proceeding compel him to give bail to observe the peace in any sum not to exceed five thousand dollars.

Sec. 15. When two or more persons, whether armed or not, shall be unlawfully or riotously assembled in any place, any sheriff, constable, police officer, or magistrate may go among them, or as near to them as possible, and command them to disperse; and if they shall fail or refuse to obey such command, may arrest them; and for the purpose of assisting such officer, the whole force of the county in which such assembly is convened may be called upon by such officer in arresting said offenders.

Sec. 17. If it appear to the governor that the power of the county is not sufficient to enable the sheriff or the officer to execute any process delivered to him, or to quell any unlawful or riotous assembly, on the application of the sheriff or other officer, he shall order such force from any other county or counties as shall be necessary.

Sec. 18. The mayor or other officer having the direction of the police of any city or town, or any sheriff or constable, may place in any public meeting a sufficient force to keep the peace when there are good grounds for believing that a breach of the peace is there to be apprehended.

Sec. 19. When the sheriff or other public officer authorized to execute process shall find or have reason to believe that resistance will be made to the execution of his process, he may command as many male inhabitants of his county, as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining those resisting; and the officer shall certify to the court from which the process issued the names of the parties so resisting, to the end that they may he punished for contempt.

SEC. 20. The following magistrates shall have power to cause to be kept all laws made for the preservation of the public peace, and in the execution of that power to require persons to give security to keep the peace in the manner herein provided: The judges of the supreme court throughout the Territory, probate judges and justices of the peace in their respective counties, the mayors, or other officers invested with judicial powers, of incorporated cities and towns within the limits of such corporation.

SEC. 21. Whenever complaint shall be made in writing, and upon oath, to any such magistrate, that any person has threatened, or is about to commit any offence against the person or property of another, it shall be the duty of such magistrate to examine such complainant, and any witnesses who may be produced, on oath; to reduce such examination to writing, and cause the same to be subscribed by the parties so examined.

SEC. 22. If it appear upon such examination that there is reason to fear the commission of any such offence by the person complained of, it shall be the duty of the magistrate to issue a warrant under his hand, with or without seal, stating the complainant's name, and the offence charged, and commanding the officer to whom it is directed forthwith to arrest the person complained of and bring him before such magistrate.

SEC. 23. Upon such person being brought before such magistrate, it shall be his duty to examine all witnesses which either party may require to be examined; and if it shall appear to the satisfaction of such magistrate that there is reason to fear the commission of such offence, he shall require the person complained of to enter into a recognizance in such sum, not exceeding five thousand dollars, as such magistrate shall direct, with one or more sufficient sureties, conditioned that he will keep the peace toward the inhabitants of this Territory, and particularly toward the complainant, for such length of time as the magistrate may designate, not to exceed one year, which bond shall be filed by the magistrate with the clerk of the district court of the county in which it was taken, and shall be by such clerk recorded in the order book.

SEC. 24. If such recognizance be given, the party complained of shall be discharged; but if he fail or refuse to find surety, it shall be the duty of the magistrate to commit him to prison until he find the same, specifying in the warrant the cause of commitment and the sum in which surety was required.

SEC. 25. Any person committed for not finding surety, as above provided, may be discharged by any magistrate authorized to bind persons to keep the peace within the county, upon giving such security as was originally required of such person.

SEC. 26. Upon the violation of any of the conditions of any bond taken, as herein provided, the district attorney may institute suit therein in any court having jurisdiction; and if the defendant shall have been convicted of any offence which would amount to a violation of such bond, the record of such conviction shall be sufficient evidence of forfeiture of such recognizance.

SEC. 27. When any person complained of shall be discharged by the magistrate before whom the examination is had, if it appears to the magistrate that the prosecution was malicious, or that there were no grounds that would induce a reasonable man to believe the person complained of was guilty of the crime specified in the complaint, it shall be the duty of said magistrate to adjudge that the complainant shall pay all costs of the proceedings.

SEC. 28. Any complainant against whom costs are adjudged, may appeal from such decision to the district court in the county in which such proceedings were had, upon filing a bond, approved by the magistrate, that he will pay all costs that may be awarded against him in said district court.

SEC. 29. If it shall appear in the district court, to which such action shall be appealed, that said prosecution was not malicious, or that there were grounds that would induce a reasonable man to believe the defendant guilty of the crime charged in the complaint, it shall be the duty of said court to reverse the judgment of the court below, from which the appeal was taken.

CHAPTER III.

LOCAL JURISDICTION OF CRIMES.

Sec. 30. *Where offences are to be tried.*
Sec. 31. *Persons without Territory committing offences against the laws, liable.*
Sec. 32. *Jurisdiction where offence commttted in different counties, and on boat or vessel.*
Sec. 33. *Jurisdiction in cases of kidnapping, etc.*
Sec. 34. *Jurisdiction in cases of burglary, etc., where property taken from one county to another.*
Sec. 35. *Accessory punished; where.*
Sec. 36. *Where mortal wound given in one county and death ensues in another; jurisdiction.*

SEC. 30. Offences committed against the laws of this Territory shall be tried in the county in which the offence is committed; or in that county to which the same is attached for judicial purposes, except as otherwise provided by law.

SEC. 31. Every person, being without the Territory, committing or consummating any offence, by an agent or other means, within the Territory, is liable to be punished by the laws thereof, in the same manner as if he were present and had commenced and consummated the offence within the Territory.

SEC. 32. When a crime has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offence occur in two or more counties, the jurisdiction is in either county, and the court in which the prosecution shall have been first commenced shall have precedence. When a crime is committed in this Territory, or on the boundary thereof, on board a boat or vessel navigating a river, or lying therein, the jurisdiction is in any county within or bordering on the line of said river on which the offence is committed.

SEC. 33. The jurisdiction of the following cases is in any county in which the offence was committed, or into or out of which the person upon whom the offence was committed has been brought, or in any county to which the same has been attached for judicial purposes:

First. For forcibly, fraudulently taking, inveigling or kidnapping any person to be sent out of the Territory for any purpose.

Second. For the taking or enticing away any female for the purpose of prostitution.

Third. For the taking, decoying, or enticing away a child under the age of fifteen years, with intent to conceal or detain it from its parents, guardians, or other person having lawful charge thereof.

SEC. 34. When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another county, the jurisdiction is in either county.

SEC. 35. An accessory, before or after the facts, may be punished in the county where he committed the offence, or in the county where the principal offence was committed.

SEC. 36. That if any mortal wound is given, or poison administered, in one county, and death by means thereof ensues in another, the jurisdiction is in either county.

CHAPTER IV.

LIMITATION OF CRIMINAL ACTIONS.

Sec. 37. *Prosecutions for murder and manslaughter not limited.*
Sec. 38. *Where penalty can not exceed ten dollars within six months.*
Sec. 39. *Misdemeanor prosecuted within three years, and felony, except murder and manslaughter, within five years.*
Sec. 40. *If offender absent from Territory, or conceals himself, absence not included.*

SEC. 37. Prosecutions for murder and manslaughter may be commenced at any time after the commission of the offence.

SEC. 38. Prosecutions for an offence must be commenced within six months after its commission, when the penalty can not exceed a fine of ten dollars.

SEC. 39. In all cases of misdemeanor, prosecutions therefor must be commenced within three years after its commission; and in cases of felony, except murder and manslaughter, prosecution must be commenced within five years.

SEC. 40. If any person who has committed an offence is absent from the Territory, after the commission thereof, or so conceal himself that process can not be served upon him, the time of the absence or concealment is not to be included in computing the period of limitation.

CHAPTER V.

PROCEEDINGS FOR THE IMPEACHMENT AND REMOVAL OF PUBLIC OFFICERS.

Sec. 41. *All officers created by Territorial law subject to impeachment.*
Sec. 42. *All impeachments tried by council.*
Sec. 43. *Articles of impeachment delivered to president of council.*
Sec. 44. *Council to fix a day for hearing; house of representatives to be notified; defendant to have copy of articles, and notified of day of trial.*
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Sec. 46. *If defendant does not appear after service, council may proceed to fix another day.*
Sec. 47. *If defendant appear, must answer articles.*
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Sec. 61. *County commissioners to suspend officer believed guilty of embezzlement; duty to appoint successor during such suspension.*
Sec. 62. *District attorneys Territorial officers, for purposes of impeachment.*

SEC. 41. Any Territorial officer, created by Territorial law, shall be liable to impeachment for any misdemeanor in office.

SEC. 42. All impeachments shall be tried by the council; when sitting for that purpose the council shall be upon oath or affirmation.

SEC. 43. When a civil officer of the Territory is charged by the house of representatives, with a misdemeanor in office, the articles specifying the crime shall be delivered to the president of the council.

SEC. 44. The council shall assign a day for hearing the impeachment, and shall inform the house of representatives therof. The president of the council shall cause a copy of the articles of impeachment, with a notice to appear and answer the same, at the time and place appointed, to be served on the defendant, not less than ten days before the day fixed for hearing.

SEC. 45. The service must be upon the defendant personally, if he can be found within the Territory, and if not, upon diligent inquiry, the council, upon proof of that fact, may order that publication be made, in such manner as they may deem proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

SEC. 46. If the defendant does not appear, the council, upon proof of service, personally, or by publication, as provided in the last two sections, may, on their own motion, or for cause shown, assign another day for hearing the impeachment, or may then proceed in the absence of the defendant to hear the same and render judgment.

SEC. 47. When the defendant appears, he must answer the articles of impeachment, which he may do either by objecting to the sufficiency of the same, or of any of the articles therein, or by denying the truth of the same.

SEC. 48. If the defendant object to the sufficiency of the articles of impeachment, the objection must be in writing, pointing out specifically in what the insufficiency consists; but the allegation need not be in any specific form; if he deny the truth of the articles of impeachment, the denial may be oral and without oath, and shall be entered upon the journal of the council.

SEC. 49. If an objection to the sufficiency of the articles of impeachment be not sustained by a majority of the members of the council who heard the argument, the defendant shall be ordered forthwith to answer the articles of impeachment; if he plead guilty, or refuse to plead, the council shall render judgment of conviction against him; if he deny the matters charged, the council shall, at such time as it may appoint, proceed to try the defendant.

SEC. 50. If the defendant appear, and is unable to procure the assistance of an attorney, it shall be the duty of the president of the council to appoint some suitable person to assist him in his defence; if the defendant is served by publication and fails to appear, it shall be the duty of the president of the council to appoint some attorney to appear in his behalf, and make defence for him.

SEC. 51. At the time and place appointed, and before the council proceed to act on the impeachment, the secretary of the Territory shall administer to the president of the council, and to each of the members present, an oath or affirmation, truly and impartially to hear, try, and determine the truth of the articles of impeachment, to the best of their knowledge and ability; and no member of the council shall act or vote upon the impeachment, or any question arising therefrom, without having taken such an oath or affirmation.

SEC. 52. The oath or affirmation having been administered, the council shall proceed to try and determine the impeachment, and may adjourn the trial from time to time.

SEC. 53. The defendant can not be convicted without the concurrence of two-thirds of the members present; and if two-thirds of the members present do not concur in the conviction, the defendant shall be declared acquitted.

SEC. 54. After conviction the council shall immediately, or at such other time as they shall appoint, pronounce judgment, which shall be in the form of a resolution, entered upon the journal of the council; and the vote upon the passage thereof shall be taken by ayes and nayes, which shall, in like manner, be entered upon the journal.

SEC. 55. On the adoption of the resolution by a majority of the members present, who voted on the question of acquittal or conviction, the same shall be the judgment of the council.

SEC. 56. The judgment may be that the defendant be suspended or removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of trust, honor, or profit in this Territory.

SEC. 57. If judgment of suspension be given, the defendant shall, during the continuance thereof, be disqualified from receiving the salary, emoluments, or fees of the office.

SEC. 58. When articles of impeachment against any officer subject to impeachment shall be presented to the president of the council, such officer shall temporarily be suspended from his office, and shall not act in his official capacity until duly acquitted. Under such suspension of any Territorial officer, created by Territorial law, the governor shall immediately appoint some suitable person to take charge of his office, by and with the advice of the council, until the acquittal of the defendant; or in case of his removal, until the vacancy be filled as provided by law; and such appointee shall give the bonds required by law for the faithful discharge of his duties.

SEC. 59. If the offence for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment.

SEC. 60. Any county, district, or township officer, who shall be duly convicted of any crime which involves a wilful and corrupt misconduct in his office, shall have, in addition to the penaly usually affixed to such crimes, the further one of forfeiture of any and all offices of trust he may hold, and it shall be the duty of the court in which such offender may be convicted, to enter judgment that he be removed from all offices of honor, trust, or profit; and may add, that he shall be forever disqualified from holding any such office in this Territory.

SEC. 61. When any person holding any county office shall have been indicted for the embezzlement of any moneys which have come into his hands by virtue of his office, the county commissioners of the proper county shall have power, if, upon due examination, they find that there are good grounds for believing the said person guilty of the charge set forth in the indictment, of suspending him from office, until the indictment against him is finally disposed of; and they shall have the power, and it shall be their duty, to appoint some qualified person to discharge the duties of such office during the suspension of such officer.

SEC. 62. For the purposes of impeachment, the district attorneys for the several districts of this Territory shall be considered and classed as Territorial officers.

CHAPTER VI.

ARREST AND EXAMINATION OF OFFENDERS.

Sec. 63. *Arrest; definition of.*
Sec. 64. *How and by whom arrests may be made.*
Sec. 65. *Officer making arrest shall state his authority.*
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Sec. 67. *A private person may make arrests in certain cases.*
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Sec. 80. *Defendant may enter into recognizance without trial where offence not punishable with death or imprisonment in penitentiary.*
Sec. 81. *In cases mentioned in last section, magistrate to endorse amount of bail.*
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Sec. 104. *Examining magistrate may associate one or more magistrates with himself.*
Sec. 105. *Magistrate to certify examinations and recognizances to clerk of court having jurisdiction.*
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Sec. 107. *Surety on recognizance discharged by surrendering principal*
Sec. 108. *Recognizance not barred or defeated by defect, etc.*
Sec. 109. *When defendant's statement made, witnesses for defendant excluded from court.*
Sec. 110. *Examining magistrate to file all papers with clerk of court to which prisoner recognized.*
Sec. 111. *Defendant may wave examination; order of court.*
Sec. 112. *Accused admitted to bail, except in cases punishable with death.*
Sec. 113. *Either party may have witnesses excluded; duty of magistrate to instruct witnesses.*
Sec. 114. *When magistrate holds defendant to bail, to endorse order on complaint.*
Sec. 115. *Form of order.*
Sec. 116. *Form of order when defendant discharged.*

Sec. 63. Arrest is the taking of a person into custody that he may be held to answer a public offence.

Sec. 64. An arrest may be made in the following manner:

First. By a peace officer under a warrant.

Second. By a peace officer without a warrant.

Third. By a private person.

Sec. 65. When an officer arrests a person, in pursuance of a warrant directed to him, he shall state by what authority he makes the arrest; and, if requested by the person arrested, shall show his warrant.

Sec. 66. An officer having authority to make arrests, shall arrest a person without a warrant:

First. When a person is attempting or has committed a public offence.

Second. When a felony in fact has been committed, and he has reasonable grounds for believing the person arrested has committed the same.

Third. Where he has reasonable grounds to believe that a person has committed an offence, and that he may escape or attempt to escape, before he can be arrested by a warrant issued by some proper officer.

Sec. 77. A private person may make an arrest:

First. For a public offence committed or attempted to be committed in his presence.

Second. When he has reasonable cause for believing that a person has committed a felony, and that said person may flee before he can be arrested by a proper officer.

Sec. 68. An officer acting without a warrant, must first state his official character and the reason for making the arrest unless the person about to be arrested is in the actual commission of the offence, or when he is pursued, after an escape or flight. A private person before making an arrest shall state to the person about to be arrested the cause thereof, and require him to submit, except when such person is in the actual commission of the offence, at the time thereof, or is in actual flight thereafter.

Sec. 69. A private person who has made the arrest of another must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

Sec. 70. When a public offence is, or is about to be, committed, in the presence of a magistrate, he may, by verbal order, command any person or persons to arrest the offender; and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Sec. 71. An arrest shall be made by the actual restraint of the person of the defendant, or by his submission to the custody of the officer or private person; the defendant shall not be subject to any more restraint than is necessary for his arrest and detention.

Sec. 72. If, after notice of intention to arrest a person by an officer, said person flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Sec. 73. Every person required by an officer, shall aid him in making an arrest.

Sec. 74. If a person arrested escape or be rescued, the person from whom he escaped or was rescued may immediately pursue and retake him at any time and any place within this Territory.

Sec. 75. It shall be the duty of every person who has knowledge that any person has committed an offence against the public, or who knowing that a public offence has been committed and has reasonable cause for believing that a certain person has committed the same, to proceed before some magistrate within the county where the offence was committed and make complaint of such person.

Sec. 76. The complaint must state the name of the person accused, if known, and if not known, he may be designated as Richard Roe, whose real name is unknown to complainant, the county in which the offence was committed, the time when the same was committed, to the best of complainant's knowledge and belief, the general name of the offence, as murder, grand larceny, assault and battery, and the person against whom or against whose property the offence was committed, if the same be known; and if the offence be against the property of any person, the general description of the property; the complaint must be subscribed and sworn to by complainant.

Sec. 77. When a complaint is made before any magistrate, charging any person with the commission of a public offence within his jurisdiction, it shall be the duty of such magistrate to issue a warrant immediately to any peace officer having authority to make arrests in his county, commanding him to forthwith arrest such offender at any place within the Territory, and bring him before such magistrate, or in case he shall be unable to act, before the nearest and most accessible magistrate within the county, to be dealt with according to law.

Sec. 78. An officer pursuing a person, for whom he has a warrant, into another county than the one for which he holds office, may, in the county where he may find such fugitive, call for assistance, and command aid, and exercise authority, as if in his own county.

Sec. 79. It shall be the duty of any person making complaint of any offence, to inform the magistrate before whom he makes the same, of all persons who have any knowledge of the commission of the offence; and it shall be the duty of the magistrate, at the time of issuing the warrant, to issue subpœnas for such persons, requiring them to attend at a specified time, as witnesses.

SEC. 80. In cases where the offence charged in the warrant is not punishable with death, or imprisonment in the Territorial prison, if the person request that he may be brought before a magistrate in the county in which the arrest was made, for the purpose of entering into a recognizance, without a trial or examination, the officer making the arrest shall take him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court cognizant of the offence, and next to be holden in the county where it is alleged to have been committed; and the party arrested shall thereupon be liberated.

SEC. 81. In all such cases, the magistrate issuing the warrant shall endorse thereon the amount of bail, which any defendant shall give, before he shall be discharged.

SEC. 82. The magistrate who shall let the person arrested to bail, shall certify the fact upon the warrant, and shall deliver the same, with the recognizance by him so taken, to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant shall cause such witnesses to be summoned to the same court as may be by him deemed necessary.

SEC. 83. If the magistrate in the county where the arrest was made shall refuse to admit to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or, in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with according to law.

SEC. 84. When the offence charged in any warrant is punishable with death, or imprisonment in the Territorial prison, the officer making the arrest in some other county shall convey the prisoner to the county where the warrant was issued, and he shall be proceeded with in the manner directed by law.

SEC. 85. Every person arrested by warrant for any offence, where no other provision is made for his examination thereon, shall be brought before some magistrate of the same county, and the warrant, with the proper return thereon, signed by the person who made the arrest, shall be delivered to such magistrate.

SEC. 86. Any magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without the consent of the person charged, and to the same or a different place in the county, as he shall think proper; and in such case, if the party is charged with a capital offence, he shall be committed in the meantime; otherwise he may be recognized in a sum, and with sureties, to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

SEC. 87. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default, to the district court; and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

Sec. 88. When such person shall fail to give bail, he shall be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate, by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

Sec. 89. When any officer or private person shall bring any one he has arrested, without a warrant, before a magistrate, it shall be the duty of said officer or person to specify the charge upon which he has made the arrest; it shall then be the duty of the magistrate or prosecuting attorney to make out a complaint of the offence charged, and cause the said officer or person, or some other person, to subscribe and make oath to such complaint; and the proceedings shall be the same thereafter as are had in cases where arrests are made under warrant.

Sec. 90. When a defendant is brought before a committing magistrate for a preliminary examination, it shall be the duty of such magistrate to inform him that he is entitled to the assistance of counsel; and, if he desires it, give him ample time to procure the same; and if he states that he is unable to procure the assistance of counsel, it shall be the duty of such magistrate to appoint some suitable person to appear and conduct the proceedings for him.

Sec. 91. Legal evidence, only, shall be received on the examination.

Sec. 92. All the witnesses for the prosecution shall be examined in the presence of the defendant. If either party demand it, all or any part of the testimony introduced must be written down by the magistrate, or some one he may appoint, and subscribed to by the witness making the same.

Sec. 93. The defendant, if he desire it, may make a statement under oath of any matters that may explain his connection with the charge against him, or will exonerate him therefrom. The prosecution shall have the right to cross-examine him upon any statement he may make. His statement, and cross-examination thereon, must be written down by the magistrate, or by some one he may appoint, and being read over in the hearing of the defendant, subscribed by him.

Sec. 94. The magistrate may give such weight to the statement of the defendant as he may think, under all circumstances, it may deserve.

Sec. 95. The magistrate shall proceed with the examination without unnecessary delay; but for good cause shown, may continue the hearing for any time not to exceed twenty days, during which time the defendant may remain in custody, if not admitted to bail.

Sec. 96. If the magistrate, upon examination of the testimony before him, finds that there is probable cause for believing the defendant guilty of the charge made against him in the complaint, or of any other criminal offence, it shall be the duty of such magistrate to commit him to jail, to be held to appear at the following term of the district court, where the same is cognizable, to answer any charge the grand jury may prefer against him, unless he give sufficient bail.

Sec. 97. If the magistrate finds, from the evidence, that there is no probable cause for believing the defendant guilty of the offence charged, or of any other criminal offence, he shall be discharged.

SEC. 98. When any defendant is committed to answer for any crime not punishable with death, it shall be the duty of the magistrate to endorse on the back of the commitment the amount of bail which he shall give, in order to be discharged from custody.

SEC. 99. On holding the defendant to answer, the magistrate shall take from each material witness examined on the part of the prosecution a recognizance, and also one from each material witness on the part of the defendant, if he desire it, conditioned to pay the sum of five hundred dollars, should he fail to appear and testify, as required, at the term of court at which the defendant is required to appear.

SEC. 100. If any magistrate shall be satisfied that there is good cause to believe that any such witnesses will not perform the condition of their recognizance, unless other security be given, such magistrate may order the witnesses to enter into a recognizance with such sureties as may be deemed necessary to insure their appearance at court.

SEC. 101. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness; or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

SEC. 102. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order or be otherwise discharged according to law.

SEC. 103. Any judge of a court of record, on application of any prisoner committed for a bailable offence, may inquire into the case and admit such prisoner to bail, and any person committed for not finding sufficient sureties or refusing to give bail, may be admitted to bail by either of said judges, or by the committing magistrate.

SEC. 104. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may, together, execute the powers and duties before mentioned.

SEC. 105. All examinations and recognizances taken by any magistrate as provided herein, shall be certified and returned by him to the clerk of the court having jurisdiction of the offence, and to which the party charged is required to appear, on or before the first day of the next term thereof, and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and, in case of disobedience, may be punished as for contempt.

SEC. 106. When any person under recognizances in any criminal prosecution, either to appear and answer, or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and judgment entered against him for the amount of such bond, and proceedings may be taken to recover judgment against any or all of the sureties thereto in any court having jurisdiction.

SEC. 107. Any surety in such recognizance may be discharged from any liability thereon, at any time before final judgment against him, upon surrendering to the court or the proper officer the principal in such recognizance, or by paying to the clerk of the court the amount for which he was bound as surety, with such costs as the courts shall direct.

SEC. 108. No action brought on a recognizance shall be barred or defeated, nor shall judgment thereon be arrested by reason of any neglect or omission to note or record the default of any principal or surety at the term when such default happened, nor by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance.

SEC. 109. When the defendant wishes to make a statement to the magistrate, it shall be his duty to exclude all of the witnesses for the defendant from the court room until after he has finished, if said statement is made before said witnesses have testified.

SEC. 110. The magistrate, as soon as practicable after the examination, shall send to or file with the clerk of the court at which he has held the defendant to answer, the complaint, all written evidence, the statement of defendant, if any is made, any recognizance he may have taken, and all orders he may have made in the hearing of the matter.

SEC. 111. Any defendant brought before a committing magistrate may waive a preliminary examination. In such cases the magistrate shall make a minute of such waiver, and make the same order as though he had found that there was probable cause for believing the defendant guilty of the offence charged.

SEC. 112. Persons charged with an offence punishable with death shall not be admitted to bail where the proof is positive or the presumption great; but, for other offences, bail may be taken for such sums as, in the opinion of the magistrate, will secure the appearance of the person charged with the offence at the court where such person is to be tried.

SEC. 113. Either party may require the witnesses of the opposite party to be excluded from the presence of the committing magistrate during the examination. In such cases, the witnesses must be ordered to remain within the calling of the court, and they shall be called, one by one, and examined. The magistrate must instruct the witnesses, that they shall hold no conversation about the matter in hearing during their exclusion.

SEC. 114. When the magistrate holds a defendant to appear at the district court, having cognizance of the offence, there to answer the same, he shall endorse on the complaint, or attach thereto, one of the following orders, according to the facts, in the next section:

SEC. 115. "It appearing to me from the evidence herein, that there is probable cause for believing the defendant, A B, guilty of the offence set forth in this complaint (or any other offence, as the case may be), I therefore order that he be held to answer the same at the next term of the district court, to be held in ——— county, and have him admitted to bail, in the sum of ——— dollars, by the recognizance hereto annexed" (if he does not give bail before his commitment to the custody of the sheriff), then an order that he be admitted to bail in the sum of ——— dollars. If the offence be not bailable, then, "I therefore order that he be held to answer the same, and at the next term of the district court, to be held in ——— county, and have committed him to the custody of the sheriff, without bail."

SEC. 116. If the magistrate find from the evidence before him, that there is no probable cause for believing the defendant guilty of the offence charged, or any other criminal offence, he shall make the following order on the complaint: "I find from the evidence there is no probable cause for believing the defendant guilty. I therefore order that he be discharged."

CHAPTER VII.

GRAND JURIES AND THEIR PROCEEDINGS.

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SEC. 117. The grand juries shall consist of sixteen persons, one of whom shall be appointed foreman by the court.

NOTE.—Act May 7th, 1873.

SEC. 118. A challenge may be interposed to the grand jury before the same is sworn, by either the Territory, or by any defendant who has been held to answer for any offence. The challenge may be to the panel, or to an individual juror, for any of the following causes mentioned in the next section.

SEC. 119. The challenge to the panel may be for the cause that the same was not drawn in accordance with the essential provisions of the law of this Territory; such challenge must specify wherein the drawing did not comply with its requirements.

SEC. 120. The challenge to an individual grand juror may be interposed, for one or more of the following causes:

First. That the juror is a minor.

Second. That he is an alien.

Third. That he is insane.

Fourth. That he is the prosecutor on the charge against the defendant.

Fifth. That he is a witness on the part of the prosecution, and has been served with process, or is bound by a recognizance as such.

SEC. 121. When a party has been held to answer for an offence, and is in custody of an officer, it shall be the duty of the judge presiding, before the grand jury is sworn, to direct the sheriff of the county to bring such person into court, and there notify him of his rights in relation to the challenging of the jury, and, if necessary, appoint counsel for him. If such person then fails to challenge the grand jury, or any member thereof, he shall be deemed to have waived all objections to the same.

SEC. 122. If any person shall be held to answer for any offence, and has been admitted to bail, it shall be his duty to appear in court at the time the grand jury is called, and upon the court advising all persons who have been held to appear, and have been admitted to bail, to appear and make known their cause of challenge, if they have any, against the grand jury; if he fail to interpose any challenge, either to the panel of the jury, or to any individual juror, he shall be deemed to have waived the same.

Sec. 123. If a challenge is allowed to the panel of the grand jury, the court shall discharge the same, and order a venire to issue for a new grand jury in accordance with law.

Sec. 124. If a challenge is allowed to an individual juror for the first, second, or third causes, such person shall be excused from the jury, and if there be not enough jurors to complete the panel left, the court shall order a venire to issue to complete the same.

Sec. 125. When a challenge is allowed to any juror for either the fourth or fifth causes therefor, the court shall charge the juror that he must not act as a grand juror in any manner in the investigation of the charge against the person challenging; and that any violation of this order will be considered a contempt of court.

Sec. 126. When the panel of the grand jury is completed, the following oath or affirmation, in substance, shall be administered to them: "You and each of you do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make, of all public offences against the laws of this Territory, committed or triable in this county, of which you have or can obtain legal evidence. You will present no one through hatred, malice, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

Sec. 127. The grand jury being empannelled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper as to the nature of their duties, and any charges for public offences returned to the court, or likely to come before the grand jury; the court need not, however, charge them respecting violations of any particular statute, except when specially required by law.

Sec. 128. Members of the grand jury may be required by any court to testify whether the testimony of a witness, examined before such grand jury, is consistent with or different from the answers given by such witness before such court; and they may also be required to disclose the testimony given before them by any person upon a complaint against such person for perjury, or upon his trial for such offence.

Sec. 129. No member of the grand jury shall be compelled or allowed to testify or disclose in what manner he or any other member of the grand jury voted on any question before them; or what opinions were expressed by any juror in relation to any such question.

Sec. 130. No grand juror shall disclose any evidence given before the grand jury, nor the name of any witness who appeared before them, except when lawfully required to testify as a witness in relation thereto; nor shall he disclose the fact of any indictment having been found against any person for a felony, not in actual confinement, until the defendant shall have been arrested thereon. Any juror violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, may be fined in any sum, not exceeding five hundred dollars, to which may be added imprisonment not exceeding six months.

Sec. 131. In charging grand juries, the court shall apprise them of the last three sections in relation to disclosures, and in what case and under what circumstances any disclosures may or may not be made.

Sec. 132. The foreman of every grand jury, from the time of his appointment to his discharge, shall be authorized to administer any oath, declaration, or affirmation, in the manner prescribed by law, to any witness who shall appear before such grand jury for the purpose of giving evidence of any matter cognizable by them.

Sec. 133. Every grand jury may appoint one of their number to to be clerk thereof, to preserve minutes of their proceedings, and of the evidence given before them; which minutes shall be given to the attorney prosecuting in the county, when so directed by the grand jury.

Sec. 134. Whenever required by any grand jury, it shall be the duty of the attorney prosecuting in the county, to attend them for the purpose of examining witnesses in their presence or giving them advice upon any legal matter.

Sec. 135. Such attorney shall be allowed at all times to appear before the grand jury, on his request, for the purpose of giving information relative to any matter cognizable by them, when they or he shall deem it necessary, but no such attorney, or any other officer or person except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving their votes, on any matter before them.

Sec. 136. Whenever required by any grand jury, the foreman thereof, or the attorney prosecuting, the clerk of the court in which such jury is empannelled shall issue subpœnas and other processes to bring witnesses to testify before such grand jury.

Sec. 137. If any witness duly summoned to appear and testify before a grand jury, shall fail or refuse to obey, the court shall cause compulsory process to be issued to enforce his attendance, and may punish the delinquent in the same manner and upon like proceedings as provided by law for disobedience of a subpœna in other cases.

Sec. 138. If any witness appearing before a grand jury shall refuse to testify, or answer interrogatories in the course of his examination, the fact shall be communicated to the court, in writing, in which the question refused to be answered shall be stated, and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

Sec. 139. If the court determine that the witness is bound to answer, and he persist in his refusal to testify, he shall be brought before the court, who shall proceed therein in the same manner as if the witness had been interrogated and refused to answer in open court.

Sec. 140. If any such witness shall be committed for a contempt, on account of his refusal to testify, and shall persist in such refusal, until the grand jury is dismissed, or until the expiration of his imprisonment, he shall not be discharged from custody before the meeting of the next grand jury, when he shall be again brought before said grand jury, and if he fail or refuse again to testify, he shall be recommitted.

Sec. 141. If any offence be discovered or committed during the sitting of any court, after the grand jury attending such court shall be discharged, or if the grand jury empannelled is not competent as such to investigate the charge against any person held to answer for the offence, such court may, in its discretion, by an order, to be entered on its minutes, direct the clerk of the court to issue a venire to the sheriff, commanding him to summon another grand jury.

SEC. 142. The sheriff shall, accordingly, forthwith summon such grand jury, from the inhabitants of the county qualified to serve as grand jurors, who shall be returned and sworn, and shall proceed in the same manner in all respects as provided by law in respect to other grand juries.

SEC. 143. The grand jury has the power, and it is their duty, to inquire into all public offences committed or triable within the jurisdiction of this court, and to present them to the court by indictment.

SEC. 144. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging the person with a public offence.

SEC. 145. In the investigation of any charge for the purpose of finding an indictment, the grand jury shall receive none but legal evidence.

SEC. 146. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require process to be issued for such witnesses.

SEC. 147. It shall be the duty of the grand jury to find an indictment when all the evidence before them is such as, in their judgment, would warrant a trial jury in a conviction, if the same remained unexplained or uncontradicted.

SEC. 148. If a member of a grand jury has reason to believe that a public offence has been committed within the jurisdiction of the court, he must declare the same to his fellow jurors, who shall thereupon investigate the same.

SEC. 149. The grand jury must inquire into the case of every person imprisoned in the county jail and not indicted, into the condition and management of the public prisons within the county, and into willful and corrupt misconduct in office of public officers, of every description, within the county; and, for such purpose, they are entitled to free access, at all reasonable times, to all public buildings, public offices, and public records.

SEC. 150. No indictment can be found without the concurrence of at least twelve grand jurors; where so found, and not otherwise, the foreman of the grand jury shall endorse it thus: "A true bill." ——— ———, "foreman."

SEC. 151. When there is not a concurrence of twelve grand jurors in finding an indictment, the foreman shall certify, under his hand, that no true bill was found.

SEC. 152. Indictments found by a grand jury shall be presented by their foreman, in their presence, to the court, and shall be filed and remain as records of such court.

SEC. 153. No indictment for any trespass against the person or property of another, not amounting to a felony, or for the first offence of petit larceny, shall be preferred, unless the name of a prosecutor is endorsed thereon, except when the same is preferred upon the information or knowledge of two or more grand jurors, or on the information of some public officer in the necessary discharge of his duty, in which case a statement of the fact shall be made at the end of the indictment, and signed by the foreman of the grand jury.

SEC. 154. The name of the prosecutor shall be endorsed as such, by himself, or, when his name has been certified as prosecutor, with the examination as provided by law, the endorsement may be made by the attorney prosecuting; but no indictment shall be quashed for want of such endorsement, if the same shall be made before the motion to quash is disposed of.

SEC. 155. It shall not be necessary for any grand jury to present any presentment prior to the presentation of the indictment.

SEC. 156. Each indictment must be signed by the attorney prosecuting; and when the grand jury return any indictment into court, the judge must examine it; and if the foreman has neglected to endorse it "A true bill," with his name signed thereto, or if the attorney prosecuting has neglected to sign his name, the court must cause the foreman to endorse, or the attorney prosecuting to sign it, as the case may require, in the presence of the grand jury.

SEC. 157. When an indictment is presented by the grand jury, the names of all material witnesses must be endorsed upon the indictment; but other witnesses may afterwards be subpœnaed by the Territory; but unless the names of such witnesses be endorsed on the indictment, no continuance shall be granted to the Territory on account of the absence of any witness whose name is not endorsed thereon.

SEC. 158. Immediately after an indictment has been filed with the clerk of the court, when the defendant has not been held to answer any offence in said court, it shall be the duty of such clerk to issue to the sheriff of said county a warrant for the arrest of such defendant, commanding him to bring the defendant forthwith before the court, unless otherwise ordered.

SEC. 159. If the court deem it proper, and the offence is bailable, he may endorse on the back of the warrant the amount in which the defendant is to be held, or admitted to bail, pending the action; or he may order the clerk to enter the amount in which the defendant shall be admitted to bail in the minutes of the court, and then the clerk shall endorse the amount on the warrant of arrest.

SEC. 160. When the court or judge has failed to fix the amount of bail, and the judge is absent from the county, the clerk of the court may fix the same.

ARTICLE VIII.

THE INDICTMENT.

Sec. 161. *All prosecutions in name of the Territory.*
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Sec. 161. All criminal prosecutions must be in the name of the Territory of Montanna.

Sec. 162. The forms of pleading in criminal actions in the district court, and the rules by which the sufficiency of pleading is to be determined, are those herein prescribed.

Sec. 163. The only pleading on the part of the Territory is the indictment.

Sec. 164. The indictment must contain:

First. The title of the action specifying the name of the court to which the indictment is presented, and the names of the parties.

Second. A statement of the facts constituting the offence, in plain and concise language, without unnecessary repetition.

Sec. 165. The indictment must be direct and certain, as it regards the party and the offence charged.

Sec. 166. The precise time of the commission of an offence need not be stated in the indictment, but it is sufficient, if it is shown to have been before the finding of the indictment and within the statute of limitations, except where time is an indispensable ingredient of the offence.

SEC. 167. In an indictment for an offence committed in relation to property, it is sufficient to state the name of any one, or names of several joint owners.

SEC. 168. The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed acccording to their legal meaning.

SEC. 169. Words used in the statute to define a public offence need not be strictly pursued, but other words conveying the same meaning may be used.

SEC. 170. The indictment shall be sufficient if it can be understood therefrom:

First. That the indictment was found by the grand jury of the county in which the court is held.

Second. That the defendant is named or described in an indictment as a person whose name is unknown to the grand jurors.

Third. That the offence was committed within the jurisdiction of the court, or is triable therein.

Fourth. That the offence charged is clearly set forth in plain and concise language, without repetition; and

Fifth. That the offence charged is stated with such a degree of certainty that the court may pronounce judgment, upon conviction, according to the right of the case.

SEC. 171. No indictment shall be quashed or set aside for any of the following defects:

First. For a mistake in the name of the court or county, or in the title thereof.

Second. For the want of an allegation of the time and place of any material fact, when the venue and time have once been stated in the indictment.

Third. That the dates and numbers are represented by figures.

Fourth. For an omission of any of the following allegations, viz.: With force and arms, contrary to the form of the statute, or against the peace and dignity of the Territory of Montana.

Fifth. For an omission to allege that the grand jurors were impanelled, sworn, or charged.

Sixth. For any surplusage or repugnant allegation, when there is sufficient matter alleged to indicate the crime and person charged; nor,

Seventh. For any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

SEC. 172. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the indictment.

SEC. 173. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is sufficient to allege, generally, that the judgment or determination was duly made, or had before such court or officer; but the facts constituting the jurisdiction must be established on the trial.

SEC. 174. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title, and the day of its approval; and the court shall take notice thereof.

Sec. 175. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Sec. 176. Any person who counsels, aids, or abets in the commission of any offence, may be charged, tried, and convicted, in the same manner as if he were a principal.

Sec. 177. An accessory after the fact, to the commission of a felony, may be indicted, tried and punished; though the principal be neither indicted nor tried.

Sec. 178. Every indictment must be recorded by the clerk, during the term at which the same is found, in a book to be kept for that purpose. The judge must compare the record with the original indictments, and certify the correctness thereof. In case the original indictment be lost or destroyed, the defendant may be tried upon a copy taken from the record, and certified by the clerk, during the term at which the same is found, in a book to be kept for that purpose. The judge must compare the record with the original indictments, and certify the correctness thereof. In case the original indictment be lost or destroyed, the defendant may be tried upon a copy taken from the record, and certified by the clerk, without any delay from that cause.

Sec. 179. In case of the loss or destruction of an indictment, the attorney prosecuting may file in court another indictment, similar to the original, certified to by the clerk of the court; and the prosecution shall proceed, and the trial be had without any delay from that cause.

Sec. 180. Indictments against persons not in custody, or who have not given bail, and the records of such indictments shall be in the custody of the clerk, can not be inspected by any person, except the court, the clerk, and his deputy, and the attorney prosecuting, until after the arrest of the defendant.

Sec. 181. No grand juror, attorney prosecuting, clerk, judge, or other officer shall disclose the fact that an indictment is found, until the defendant has been arrested, except any disclosure that may be necessarily incident to the issue and service of a warrant to arrest the defendant. A violation of this and the next preceding section may be punished as a misdemeanor by fine or imprisonment, or both.

Sec. 182. Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offence.

Sec. 183. In all other cases, the defendant may be found guilty of an offence, the commission of which is necessarily included in that with which he is charged in the indictment.

Sec. 184. Counts for murder in the first and second degrees, and for manslaughter, may be joined in the same indictment, and on the trial the defendant may be convicted of either offence.

Sec. 185. When any offence shall be committed upon, or in relation to, any personal property belonging to several partners, or owners, the indictment for such offence shall be deemed sufficient, if it allege such property to belong to any one or more of such partners, or owners, without naming them all.

Sec. 186. An indictment against any accessory to any felony may be found in any county where the offence of such accessory shall have been committed, notwithstanding the principal offence may have been committed in another county, and the like proceeding shall be had therein in all respects, as if the principal offence had been committed in the same county.

Sec. 187. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name given in the indictment.

Sec. 188. The indictment shall charge but one offence; but it may set forth such offence in different counts.

Sec. 189. When an offence involves the commission, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, shall not be deemed material.

Sec. 190. An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state, generally, that the same was published concerning him, and the fact that it was so published must be established on the trial.

Sec. 191. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction, or withholding, is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

Sec. 192. In an indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what court, or before whom, the oath alleged to be false was taken; and that the court or person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is commenced, nor the commission or the authority of the court or person before whom the perjury was committed.

CHAPTER IX.

ARRAIGNMENT AND PLEADING ON THE PART OF THE DEFENDANT.

Sec. 193. *If defendant in custody and indicted to be arraigned.*
Sec. 194. *If defendant on bail, to appear.*
Sec. 195. *If defendant not in custody, to be arraigned when arrested.*
Sec. 196. *If without counsel; court to appoint.*
Sec. 197. *Arraignment; manner of.*
Sec. 198. *If defendant, when arraigned, refuse to plead, plea of not guilty entered, etc.*
Sec. 199. *If indictment be fer felony, defendant must be present; if for misdemeanor, may appear by counsel.*
Sec. 200. *Defendant to be informed of name under which he was indicted.*
Sec. 201. *If he give no other name, court to proceed.*

Sec. 202. *If he give another name, court to direct, etc.*
Sec. 203. *Time allowed to answer indictment.*
Sec. 204. *Of motions and pleadings to an indictment.*
Sec. 205. *Causes for which indictment may be set aside.*
Sec. 206. *When defendant not held to answer before indictment filed; grounds to set aside, etc.*
Sec. 207. *Motion to set aside; what must be, and when made.*
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Sec. 209. *If motion allowed, proceeding.*
Sec. 210. *If case resubmitted, defendant continues answerable.*
Sec. 211. *When defendant may demur to indictment.*
Sec. 212. *Demurrer, what to contain, etc.*
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Sec. 214. *If case not resubmitted, defendant discharged.*
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Sec. 217. *Pleas to indictment; what may be.*
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Sec. 219. *In cases of felony, defendant to appear in person.*
Sec. 220. *Defendant may withdraw one plea and submit another.*
Sec. 221. *Plea of not guilty; the general issue.*
Sec. 222. *Formal acquittal in certain cases; effect of.*
Sec. 223. *Acquittal on merits; effect of.*
Sec. 224. *Conviction or acquittal, a bar.*

Sec. 193. If a defendant is in custody at the time of the finding of the indictment, the court shall order the person holding him to produce him in court, for the purpose of being arraigned.

Sec. 194. If the defendant has been discharged on bail, he must appear within twenty-four hours after the filing of the indictment, for the purpose of arraignment, or his recognizance shall be forfeited.

Sec. 195. If the defendant is not in custody at the time of filing the indictment, then as soon as he is produced in court, or at such time as he may be recognized to appear therein, he shall be arraigned.

Sec. 196. If any person about to be arrigned upon an indictment for felony, be without counsel to conduct his defence, and he be unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the prisoner, at all reasonable hours.

Sec. 197. The defendant shall be arraigned by reading the indictment to him in open court, unless such arraignment be waived; and such arraignment, or waiving thereof, shall be noted in the minutes of the court.

Sec. 198. When any person shall be arraigned upon any indictment, and refuse to deny the charge in any form, or confess the same, a plea of "not guilty" shall be entered, and the same proceedings shall be had, in all respects, as if he had formally pleaded not guilty to such indictment.

Sec. 199. If the indictment be for a felony, the defendant must be present in person; but if for a misdemeanor, his personal presence is not necessary, and he may appear, be arraigned, and plead by counsel.

Sec. 200. When the defendant is arraigned, he shall be informed, that if the name by which he is indicted be not his true name, he must declare his true name, or be prosecuted by the name in the indictment.

Sec. 201. If he give no other name, the court may proceed accordingly.

Sec. 202. If he allege that another name is his true name, the court shall direct an entry thereof, in its minutes, and all subsequent proceedings on the indictment may be had against him by that name, referring, also, to the name by which he was indicted.

Sec. 203. If, on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time as the court may allow, to answer the indictment.

Sec. 204. At the time the defendant shall be required to answer the indictment, he may move to set the same aside, or he may demur or plead thereto.

Sec. 205. The indictment shall be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

First. When it is not found endorsed, or has not been presented as prescribed by this act.

Second. Where the names of the material witnesses examined before the grand jury are not inserted at the foot of the indictment, or endorsed thereon.

Third. When any person has been permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except those allowed by law.

Sec. 206. When the defendant has not been held to answer before the finding of the indictment, he may move to set it aside, on any ground which would have been a good cause of challenging either the entire panel of the grand jury, or any individual grand juror, under either (the) first, second, third, or fourth grounds of challenge, to such jurors.

Sec. 207. The motion to set aside the indictment must be in writing, subscribed by the party defendant, or his attorney, and must specify clearly the ground of objection to the indictment. If such motion is not made before the defendant demurs or pleads, the grounds of objection to the indictment, which might be made in such manner, shall be deemed waived.

Sec. 208. If the motion is denied, the defendant must immediately demur, or plead to the indictment.

Sec. 209. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom; or if admitted to bail, his bail must be exonerated; or if he has deposited money instead of bail, that the same be refunded to him, unless it direct that the case be resubmitted to the same or another grand jury.

Sec. 210. If the court direct that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

Sec. 211. The defendant may demur to the indictment when it shall appear, upon the face thereof:

First. That the grand jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the jurisdiction of the court.

Second. That the acts constituting the offence are stated in such ambiguous and uncertain manner, that a person of common understanding can not tell what was intended.

Third. That more than one offence has been charged in the indictment.

Fourth. That the facts stated do not constitute a public offence.

Fifth. That the indictment states matter, which, if true, constitutes a legal justification for the offence charged, or a bar to the prosecution.

SEC. 212. The demurrer must be in writing, signed by either the defendant or his counsel, and filed with the clerk of the court. It must distinctly specify the grounds of objection to the indictment, or it will be disregarded.

SEC. 213. If the demurrer be sustained, the judgment shall be final upon the indictment demurred to; and shall be a bar to another prosecution for the same offence, if the demurrer be sustained for the fifth cause. When a demurrer is sustained for any other cause, the case shall be referred to the same or another grand jury, unless, for good cause, the court direct otherwise.

SEC. 214. When a case is resubmitted to the same or another grand jury, the defendant, if in custody, shall be detained therein until he gives bail; or if at large upon bail, the recognizance shall be answerable for his appearance to answer a new indictment. If not resubmitted, he shall be discharged, and his bail exonerated.

SEC. 215. If the demurrer be overruled, the defendant must plead to the indictment, within such time as the court may allow.

SEC. 216. A defendant who has failed to demur to an indictment, for any of the defects appearing upon its face, shall be deemed to have waived the same, except the defects that the court has no jurisdiction over the same, or that the indictment does not state facts sufficient to constitute an offence; these he may take advantage of on the trial, or on motion to arrest judgment.

SEC. 217. There may be three kinds of pleas to an indictment: A plea of—*First.* Guilty. *Second.* Not guilty. *Third.* A former judgment of conviction or acquittal of the offence charged, which may be pleaded with, or without, the plea of not guilty.

SEC. 218. Every plea must be oral, and must be entered upon the minutes of the court.

SEC. 219. In all cases of felony, the defendant must appear in court personally, and make his plea to the indictment.

SEC. 220. The court may, at any time before judgment, permit the defendant to withdraw any plea he has made, and substitute another therefor.

SEC. 221. The plea of not guilty shall be deemed a denial of every material allegation in the indictment.

SEC. 222. If the defendant is formally acquitted, on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indictment, it shall not be deemed an acquittal of the same offence.

SEC. 223. When a defendant shall have been acquitted on the merits, he shall be acquitted on the same offence, notwithstanding any defect of form or substance in the indictment on which he was acquitted.

SEC. 224. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment, for the offence charged in the indictment, or for any offence necessarily included therein, of which he might have been convicted under that indictment.

CHAPTER X.

CHANGE OF VENUE.

Sec. 225. *Change of venue; when granted to defendant.*
Sec. 226. *Duty of court when change granted.*
Sec. 227. *Territory entitled to change; when.*
Sec. 228. *Application for change on part of Territory, how and by whom made.*
Sec. 229. *Changes of venue not granted; when.*
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Sec. 233. *As to notice if chanye in term time; notice in other cases.*
Sec. 234. *Penalty on neglect of clerk relating to change.*
Sec. 235. *If several defendants and cause of change exist as to part; others tried.*

SEC. 225. Any defendant, in any indictment or information, may be awarded a change of venue upon a petition setting forth that he has reason to believe that he will not receive a fair trial in the court in which such indictment or information may be pending, on account that the judge is interested or prejudiced, or is of kin to, or shall have been counsel for either party, or that the prosecutor has an undue influence over the minds of the inhabitants of the county where the indictment or information shall be pending, or that the inhabitants of the county are prejudiced against the applicant, so that he can not expect a fair trial; such party may apply to the court in term time, or to the judge in vacation, by petition, setting forth the cause of the application, and praying a change of venue; and such judge or court, being satisfied that such cause exists, the facts stated in such petition being verified by the oath of the applicant, or some credible person, and reasonable notice having been given to the district attorney, may award a change of venue to some county where the causes complained of do not exist. And in all such cases, where the judge is interested, or of kin, or shall have been counsel in the case, the court may, in term time, award a change of venue in its discretion: *Provided,* That there shall be but one change of venue allowed.

SEC. 226. If the applicant is in custody, or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such applicant to the jail of the county, if there be a jail in such county to which the change of venue shall have been made, and there deliver him to the keeper of such jail, together with the warrant, by virtue of which he is confined or held in custody, at least three days next before the first day of the term of said court. The sheriff shall deliver such warrant, with the body of such prisoner, to the jailor of the proper county, who shall receive the same, and give the sheriff a receipt therefor, and shall take and keep the prisoner, in the same manner as if he had been originally committed to his custody. No change of venue shall be allowed until after indictment is found.

Sec. 227. The Territory may have a change of venue for any of the causes affecting it for which the defendant may obtain the same, and also, for the reason that it is impossible to obtain a jury in any county, who have not formed an opinion as to the guilt or innocence of the defendant, which would disqualify them as jurors.

Sec. 228. When it is necessary for the Territory to obtain a change of venue, the district attorney, or some one cognizant of the fact shall make the necessary affidavit; and the district attorney shall make the necessary application.

Sec. 229. Changes of venue shall not by granted after the first term at which the party applying for the same might have been heard, unless the cause shall have arisen subsequent to such term.

Sec. 230. When a change of venue shall be granted, in the term or vacation, the judge shall immediately transmit to the clerk of the court, wherein such indictment is pending, the petition and affidavit, together with an order in writing, directing the change of venue; and such clerk shall file the same in his office, and make a copy thereof, and a full transcript of the record and proceedings in such cause, together with a copy of the indictment, and all papers filed in the cause, and making a part of the record and the recognizance of the party, and all witnesses; and the clerk of the court to which such cause shall be changed shall file the same, and the cause shall be docketed, and all proceedings had as if the cause had originated in said court. When the venue in any cause shall be changed as aforesaid, the parties and witnesses who have entered into recognizance are hereby required, on notice of such change, to attend at the time and place of trial, to be had according to such change, and, on failure so to do, shall work a forfeiture of the recognizance.

Sec. 231. When a change of venue is granted, and a conviction shall be had, and imprisonment shall be part of the judgment, the sheriff shall convey the prisoner at once to the county where the crime shall have been committed, and retain him in custody according to the judgment of the court. The costs and charges shall be paid by the county in which the crime was committed, if the defendant be unable to pay them.

Sec. 232. All questions concerning the regularity of proceedings, and the rights of the court to which the change is made to try the cause and execute judgment, shall be considered as waived after trial and verdict.

Sec. 233. When the order of removal is made in term time, it shall be deemed a notice to every person who shall have entered into recognizance to appear at such term. In other cases, the notice shall be in writing, signed by the attorney prosecuting, or clerk of the court, and served on the person so recognized in the same manner as a subpœna is served.

Sec. 234. If any clerk of the district court shall neglect or refuse to perform any duty in relation to the removal of a cause, enjoined on him by the foregoing provisions, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered by an action in the name of and for the use of the Territory.

Sec. 235. When there are several defendants in any indictment, in a criminal prosecution, and the cause of the removal thereof exists only as to part of them, the other defendants shall be tried; and all proceedings had against them in the county in which the cause is pending, shall be in all respects as if no order of removal had been made as to any defendant.

CHAPTER XI.

BAIL.

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Sec. 265. *Defendant arrested in any county,*
Sec. 266. *If defendant convicted must be committed.*
Sec. 267. *If offence bailable amount endorsed on order.*
Sec. 268. *Bail; by whom taken in such case.*

SEC. 236. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon the taking of bail.

SEC. 237. The taking of bail consists in the acceptance of a competent court, magistrate, or legally authorized officer, of the recognizance of a sufficient bond for the appearance of the defendant according to the terms of the recognizance, or that the obligor will pay the Territory of Montana a specified sum.

SEC. 238. A person charged with an offence may be admitted to bail before conviction, as follows: *First.* As a matter of discretion in all cases where the punishment is death, except where the proof is evident and the presumption great. *Second.* As a matter of right in all other cases.

SEC. 239. Any magistrate who has held any defendant to answer a bailable offence, and any court or judge thereof, or in his absence, the clerk thereof, in which a defendant has been indicted, and any magistrate having the power to issue a writ of *habeas corpus*, when the defendant is brought before him thereon, shall have the power to make any order admitting the defendant to bail, fixing the amount thereof.

SEC. 240. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered shall require such notice of the application therefor, as he may deem reasonable, to be given to the district attorney of the district where the examination is held.

SEC. 241. After the conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail: *First.* As a matter of right, when the appeal is from a judgment imposing a fine only. *Second.* As a matter of discretion, in all other cases.

SEC 242. Before conviction, a defendant may be admitted to bail: *First.* For his appearance before a magistrate on an examination of the charge before being held to answer. *Second.* To appear at the court before which the magistrate is required to return the depositions and statement, together with the complaint and orders thereon, upon the defendant being held to answer after examination. *Third.* After indictment, either before the warrant has issued for the arrest of the defendant, or upon an order of court fixing or enlarging the amount of bail, or upon his being surrendered by his bail, to answer the indictment in the court in which it has been found, or to which it may be sent or removed for trial.

SEC. 243. After conviction, and on appeal, the defendant may be admitted to bail as follows: *First.* If the appeal be from a judgment imposing a fine only, on the cognizance of bail that he will pay the same, or such part of it as the court may direct, if the judgment be affirmed or modified, or the appeal dismissed. *Second.* If the judgment of imprisonment has been given, that he will surrender himself in execution of such judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

SEC. 244. Bail for the appearance of a defendant is put in by a written recognizance executed by two sufficient sureties, with or without the defendant, in the discretion of the officer taking the same.

SEC. 245. The qualifications of bail shall be as follows:

First. Each of them must be a resident and a householder, or freeholder, within the Territory and the district where the bail is offered, within the discretion of the officer taking the same.

Second. They must each be worth the amount specified in the recognizance in property within the Territory, exclusive of property exempt from execution, over and above all other debts and liabilities. The officer taking the bail, however, may allow more than two bail to justify in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

SEC. 246. The bail shall, in all cases, justify by affidavit taken before some legally authorized officer; the affidavit must state that they each possess the qualifications provided in the above section; the officer taking the bail may, in his discretion, examine the sureties as to their property, the amount and nature of it, and where the same is at the time.

SEC. 247. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and approve the bail. He may administer oaths and examine bail as to sufficiency.

SEC. 248. Every recognizance taken by any peace officer must be certified by him forthwith, to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and from the time of filing it shall have the same effect as if taken in open court.

SEC. 249. The defendant may, in place of giving bail, deposit with the clerk of the court to which the defendant is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody.

SEC. 250. When any person is committed for an offence, and the amount of bail is specified in the warrant of commitment, the sheriff may take the recognizance, and approve the bail.

SEC. 251. When a surety desires to surrender his principal, he may procure a copy of the recognizance from the clerk, by virtue of which, the bail, or any person authorized by him, may take the principal in any county within the Territory.

SEC. 252. The bail, at any time before final judgment against him, on a forfeiture of the recognizance, may surrender his principal in open court, or to the sheriff; and upon payment of all costs, may thereupon be discharged from all further liability upon the recognizance.

SEC. 253. The bail must deliver a certified copy of the recognizance to the sheriff, with the principal; and the sheriff must accept the surrender of the principal, and acknowledge it in writing.

SEC. 254. Any defendant so surrendered may give other bail or remain in custody, until discharged by due course of law.

SEC. 255. If, without sufficient excuse, the defendant neglect to appear for trial or judgment, or upon any other occasion, when his presence in court may be lawfully required according to the conditions of his recognizance, the court must direct the fact to be entered upon the minutes, and the recognizance of bail, or money deposited as bail, as the case may be, shall thereupon be forfeited.

SEC. 256. The attorney prosecuting may, at any time after the adjournment of the court, proceed by action against the bail upon the recognizance. Said action shall be governed by the rules of civil pleading, so far as applicable.

Sec. 257. No action upon a recognizance may be defeated for any defect of form, or any omission of recital, condition or undertaking therein, or neglect of the clerk to endorse or record it, but the sureties shall be bound thereby, to the full amount specified therein. A recognizance may be recorded after execution is awarded.

Sec. 258. Any recognizance forfeited by the prisoner shall be collectable upon execution, although he be afterwards arrested on the original charge, unless remitted by the court for cause shown.

Sec. 259. If any person indicted for a criminal offence, abscond or flee from justice, or cannot be found to be served with process; or being let to bail, shall not appear according to the conditions of the recognizance, the cause may be continued from time to time without issuing process on the indictment; and such process may be issued at any time, upon the application of the attorney prosecuting.

Sec. 260. Whenever any person is indicted for any bailable offence, it shall be the duty of the court, at the time the indictment is presented and filed, to make an order, to be entered in the minutes, of the amount in which the defendant shall be admitted to bail, unless the court deem it best to endorse such order on the warrant.

Sec. 261. When the order fixing the amount of bail is entered in the minutes, the clerk will endorse the same on the warrant of arrest.

Sec. 262. If any money has been deposited instead of bail, and the defendant, at any time, before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, upon the defendant giving the district attorney five days' notice of his intention to apply for a return of the deposit, and, at the same time, serving a certificate of the officer to whom he has delivered himself of the fact, he shall be entitled to an order of the court, or the judge thereof, if the court is not in session, that the deposit be returned to him.

Sec. 263. The court to which the committing magistrate held the defendant to answer, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered in its minutes, direct the re-arrest of the defendant, and his commitment to the officer to whose custody he had been committed at the time of giving bail, in the following cases:

First. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or the money deposited instead thereof.

Second. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or removed from the Territory.

Third. When a defendant has been held to answer a criminal charge, and has been admitted to bail, and thereafter is indicted for a felony, the court in which the indictment is presented may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified by the order.

Fourth. That upon the trial of any person charged with a felony, the court, in its discretion, at any time after the jury shall have been sworn to try the same, may order the defendant into custody of the sheriff until the final determination of the same; notwithstanding such defendant may have given bail to answer such charge.

Note.—The last clause of above section is from Act of May 8th, 1873.

Sec. 264. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any sheriff, constable, marshal, or policeman within this Territory, and committed to the sheriff of the county where the case is pending or the conviction had, as the case may be, to be detained until legally discharged.

Sec. 265. The defendant may be arrested pursuant to this order, or upon a certified copy thereof, in any county in the Territory, in the same manner as upon warrants of arrest.

Sec. 266. If the order recite as the grounds upon which it is made, the failure of the defendant to appear for judgment, upon conviction, the defendant must be committed according to the requirements of the order.

Sec. 267. If the order be for any other cause, and the offence be bailable, the court must fix the amount of bail by an indorsement on the order, and may recite the order that the defendant be admitted to bail in such sum.

Sec. 268. In such cases, bail may be taken by any one legally authorized to take bail.

CHAPTER XII.

TRIAL, AND INCIDENTS CONNECTED THEREWITH.

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SEC. 269. At the time the defendant makes his plea to the indictment he must notify the court of his desire, if he have any, for a continuance of his cause to some particular day, or for the term; and if he desires any continuance, he must file his affidavit, showing good cause therefor, within such time as the court may grant.

SEC. 270. For good cause shown, the court may grant a continuance for any number of days, or for the term; any cause which would be considered a good one for a continuance in a civil case, shall be considered sufficient in a criminal action.

SEC. 271. The Territory may obtain a continuance for the same reasons, and must give the same notice therefor as the defendant, and be subject to the same restrictions; the district attorney, or any one acquainted with the facts, may make the proper affidavit.

SEC. 272. If neither the defendant or the Territory notify the court at the time the defendant pleads of a desire for a continuance, neither shall be entitled to make the application thereafter for any cause which existed at that time, and of which the party making the application had knowledge, or could have had knowledge; any application made after that time must be for a cause which arose, or has come to the knowledge of the applicant, since the making of the plea.

SEC. 273. If the case is not continued, it shall be set down for trial on some certain day, in the order in which it appears on the docket, unless by consent it is set down for trial out of its order.

SEC. 274. If the defendant, however, desire, he shall have two days after he makes his plea in which to prepare for trial.

SEC. 275. In any indictments for a misdemeanor, by the consent of defendant or his counsel and the district attorney, the issue may be submitted to the court; but in all other cases, the issue must be submitted to a jury.

SEC. 276. The qualifications of a trial juror in criminal actions must be the same as in civil cases, according to the laws of this Territory.

SEC. 277. The defendant, in every indictment for a criminal offence, shall be entitled to a peremptory challenge of jurors in the following cases, and to the numbers, as follows:

First. If the offence charged be punishable with death, or by imprisonment not less than for life, challenges to the number of ten, and no more.

Second. If the offence be punishable with like imprisonment, not less than a specified number of years, and no limit to the duration of such imprisonment is declared, to the number of eight, and no more.

Third. In any other case punishable with imprisonment in the penitentiary, to the number of six, and no more.

Fourth. In cases not punishable with death or imprisonment in the penitentiary, to the number of four, and no more.

SEC. 278. In all criminal trials the Territory may challenge half the number of jurors allowed the defendant by the preceding section.

SEC. 279. If the offence charged be punishable with death, any person entertaining such conscientious opinions as would preclude his finding the defendant guilty, shall not serve as a juror.

SEC. 280. No person who believes that the punishment fixed by law to be too severe for the offence, or entertains any opinion that would preclude his finding the defendant guilty, shall be sworn as a juror.

SEC. 281. When any indictment alleges the offence against the person or property of another, neither the injured party nor any person of kin to him shall be a competent juror on the trial of such indictment; nor shall any person of kin to the prosecutor or defendant in any case serve as a juror on the trial thereof.

SEC. 282. Trial juries for criminal actions shall be formed in the same manner as trial juries for civil actions.

SEC. 283. Either party may interpose a challenge:

First. To the panel.

Second. To an individual juror for a sufficient cause.

SEC. 284. A challenge to the panel may be interposed for the following causes: That there has been a material departure from the provisions of law in drawing and summoning the jury.

SEC. 285. All challenges to the panel must be made in writing, specifying the particular ground of challenge; and this must be done before the jury is sworn.

SEC. 286. A challenge to an individual juror may be for one of the following causes:

First. A conviction for felony, when the juror has not been fully restored to the rights and privileges of a citizen, by pardon.

Second. A want of any of the qualifications prescribed by statute for a juror.

Third. Unsoundness of mind; or such a defect in the faculties of the mind, or the organs of the body, as renders him incapable of performing the duties of a juror.

Fourth. Consanguinity or affinity, within the fourth degree, to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant.

Fifth. Standing in the relation of guardian or ward, master and servant, landlord and tenant; being a member of the family of defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in the employ of either of these, or the defendant, on wages.

Sixth. Being a party adverse to the defendant in a civil action, or having complained against, or being accused by, him in a criminal action.

Seventh. Having served on the grand jury which found the indictment.

Eighth. Having served on a trial jury, which has tried another person who was charged with the same offence, in the same indictment, as the defendant.

Ninth. Having been one of a jury, formerly sworn on a trial jury to try the same indictment, which was discharged without a verdict, after the case was submitted to it.

Tenth. Having served on a jury in a civil action, brought against the defendant, for the act charged as an offence.

Eleventh. Having formed or expressed an opinion as to the guilt or innocence of the defendant of the crime charged in the indictment, or on any material fact to be tried, if it appear that such opinion would prejudice or bias the mind of the juror.

Twelfth. That a juror is a material witness for either party, or has been a material witness on a former trial of the issue.

Thirteenth. Such an actual bias in the mind of the juror against the defendant, or his race, as would show that he is inimical to him.

SEC. 287. The court shall try all challenges, whether for actual or implied bias.

SEC. 288. Witnesses may be introduced by either party in support of any challenge for bias, when the juror challenged denies the same.

SEC. 289. All challenges must be interposed before the jury is sworn, unless the cause of challenge be discovered after the jury is sworn and before the introduction of any evidence, when the court, in its discretion, may allow the challenge to be interposed.

SEC. 290. Whenever a juror is excused from the jury, after it is sworn, upon challenge of either party, the panel shall be filled in the same manner as before the swearing of the jury.

SEC. 291. No person indicted for a felony can be tried unless he be personally present during the trial; nor can any person indicted for any other offence be tried unless he be present, or some responsible person shall have executed an undertaking to pay any fine and the costs that may be adjudged against the defendant in such action. Every person indicted shall be admitted to make lawful proof, by competent witnesses, or other testimony in his defence.

SEC. 292. The proceedings prescribed by law in civil cases, in respect to the impannelling of jurors, the keeping of them together, and the manner of rendering their verdict, shall be had upon trials of indictments, and prosecutions for criminal offences, except in cases otherwise provided by statute.

SEC. 293. The provisions of law in civil cases, relative to compelling the testimony and attendance of witnesses, their examination on oaths and affirmations, and proceedings for contempt, to enforce the remedies and protect the rights of parties, shall extend to criminal cases, so far as they are in their nature applicable thereto, subject to the provisions contained in any statute.

SEC. 294. In trials for treason, no evidence shall be given of any overt act that is not expressly laid in the indictment, and no conviction shall be had upon any indictment for such offence, unless one or more overt acts be expressly alleged therein.

SEC. 295. In trials for conspiracy, in those cases where the overt act is required by law to consummate the offence, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, and proved on the trial; but other overt acts, not alleged in the indictment may be given in evidence on the part of the prosecution.

SEC. 296. Proof of actual penetration into the body shall be sufficient to sustain an indictment for rape, or for crime against nature.

SEC. 297. If in trial or proceeding, in a criminal case, the existence, constitution, or powers of any corporation shall become material, or be in any way drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation, but the same may be proved by general reputation, or by the printed statute book of the State government or country by which such corporation was created.

Sec. 298. No person shall be rendered incompetent to testify in criminal causes, by reason of his being the person injured, or defrauded, or intended to be injured or defrauded, or that would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution.

Sec. 299. Persons of skill, or experts, may be called to testify as to the genuineness of a note, bill, draft, certificate of deposit, or other writing; but three witnesses at least shall be required to prove the fact, except in case of a larceny thereof.

Sec. 300. Any person called as a witness to testify against another for gaming, is a competent witness to prove the offence, although he may have been concerned as a party, and shall be compelled to testify as other witnesses; but he shall not be liable to indictment or punishment in any such case.

Sec. 301. When two or more defendants are jointly indicted for any felony, any one defendant requiring it shall be tried separately; in other cases, defendants jointly indicted shall be tried jointly or separately, in the discretion of the court.

Sec. 302. If any person indicted for any offence, and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offence, which shall be held after the indictment is found, he shall be entitled to be discharged, so far as it relates to the offence for which he was committed, unless the delay shall be granted on the application of the prisoner, or shall be occasioned by the want of time to try the cause at such second term.

Sec. 303. If any person indicted for any offence, and held to answer on bail, shall not be brought to trial before the end of the third term of the court in which the cause is pending, which shall be held after such indictment is found, he shall be entitled to be discharged, so far as relates to such offence, unless the delay be granted on his application, or be occasioned by the want of time to try such cause at such third term.

Sec. 304. If, when application is made for the discharge of a defendant, under either of the last two sections, the court shall be satisfied there is material evidence on the part of the Territory, which can not then be had; that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term; the cause may be continued to the next term, and the person remanded or admitted to bail, as the case may require.

Sec. 305. No indictment shall be *nolle prosequied,* except by order of the court on motion.

Sec. 306. The jury being impannelled and sworn, the trial shall proceed in the following order:

First. The attorney prosecuting must state the case, and offer the evidence in support of the prosecution.

Second. The defendant, or his counsel, may then state his defence, and offer evidence in support thereof.

Third. The parties may respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

Fourth. When the evidence is concluded, unless the case is submitted without argument, the counsel for the Territory shall make the opening argument, the counsel for the defendant or defendants shall follow, and the counsel for the Territory shall conclude the argument.

Fifth. The court shall then charge the jury, in writing, and give such instructions as may be asked by the parties; or he may, in his discretion, refuse to give the same, or may modify the same. When an instruction shall be given, the court shall write upon the margin thereof, "given." When such instruction shall be refused, the court, in a similar manner, shall write the word "refused." All modifications of instructions shall be in writing. No refused instruction shall be read in the hearing of the jury; nor shall the court, in any case, make any oral comments to the jury on the instructions, unless by agreement of both parties. All instructions given and refused shall be filed among the papers of the cause.

Sec. 307. When there is reasonable doubt whether his guilt is shown, he must be acquitted. When there is reasonable doubt in which of two or more degrees of the offence he is guilty, he may be convicted of the lowest degree only.

Sec. 308. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defence, direct any defendant to be discharged, that he may be a witness for the Territory. A defendant may, also, when there is not sufficient evidence to put him on his defence, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a co-defendant. The order of discharge shall be a bar to any other prosecution for the same offence.

Sec. 309. When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offence, the defendant shall not be discharged, if there appears good cause to detain him in custody; but the court shall commit him, or recognize him, to answer to the offence; and, if necessary, recognize the witnesses to appear and testify.

Sec. 310. When it appears at any time before judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment to be corrected, and direct that all the papers and proceedings be certified and transferred to the proper court of the proper county, and recognize the defendant and witnesses to appear at such court on the first day of the next term thereafter, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced.

Sec. 311. When a jury has been impannelled in either case, contemplated in the last two preceding sections, such jury may be discharged without prejudice to the prosecution.

Sec. 312. When the defendant has been convicted or acquitted upon an indictment for an offence, consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offence charged in the former, or for any lower degree of that offence, or for an offence necessarily included therein.

Sec. 313. If a juror has personal knowledge of any fact material to the cause, he must declare it to the court, and not to his fellow-jurors out of court; if a juror declare a fact material to the cause to his fellow-jurors, without the knowledge of the court and defendant, he may be punished as for a contempt.

SEC. 314. When the jurors are permitted to separate after being impannelled, and at each adjournment, they must be admonished by the court that it is their duty not to converse among themselves, nor suffer others to converse with them, on any subject connected with the trial, or to form or express an opinion thereon, until the cause is finally submitted to them.

SEC. 315. After hearing the charge, the jury may either decide in court or retire for deliberation. They must retire under charge of an officer, sworn to keep them together, in some private and convenient place, without food, except such as the court shall order, and not permit any person to speak or communicate with them, nor do so himself, unless by order of the court, except to ask them whether they have agreed upon their verdict, and return them into court when they have so agreed, or when ordered by the court. The officer shall not communicate to any person the state of their deliberations.

SEC. 316. A conviction can not be had on the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offence or the circumstances thereof.

SEC. 317. The court may direct the jury in any case to be discharged, when it appears that it has no jurisdiction of the offence, or that the facts charged in the indictment do not constitute an offence punishable by law.

SEC. 318. When a jury is discharged for want of jurisdiction in the court to hear and determine the case, and it appears that the offence was committed within the jurisdiction of another district in this Territory, the court shall commit the defendant for a certain time, to await a warrant for his arrest from the proper county, and, in the meantime, the defendant may be admitted to bail under the usual legal restrictions provided in cases of commitment on preliminary examination.

SEC. 319. If no warrant is produced on or before the day the defendant is recognized to appear, in such case he shall be discharged, and his bail, if he have any, be exonerated.

SEC. 320. In such case the clerk of the court shall forthwith transmit a certified copy of the indictment, and of all papers filed in the action, to the district attorney of the proper county, at the expense of that county.

SEC. 321. Whenever, in the opinion of the court, it is proper that the jury shall view the place in which the offence is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which may be shown to them by a person appointed by the court for that purpose.

SEC. 322. Up to the time that the case is submitted to the jury, on the consent of both the district attorney and the attorney for the defendant, the jury, in the discretion of the court, may be allowed to separate, but not afterwards.

SEC. 323. When a jury is required to be kept together, the sheriff shall provide them with board and lodging at the expense of the county.

SEC. 324. If, before the conclusion of a trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged; in that case a new juror may be sworn and the trial begin anew.

SEC. 325. In charging the jury the court shall state to them all such matters of law as it shall think necessary for their information, in giving their verdict.

SEC. 326. Either party may present to the court any written charges upon matters of law, and request them to be given. If the court think them to be correct and pertinent, they shall be given; if not, they shall be refused.

SEC. 327. On the trial of any indictment or prosecution for a criminal offence, exceptions to the decisions of the court may be made in the same cases and in the same manner as provided by law in civil cases; and bills of exceptions shall be settled, signed, and filed as allowed by law in civil cases.

SEC. 328. A room shall be provided by the sheriff of each county for the jury, upon their retirement for deliberation, with suitable furniture, lights and fuel, unless the same shall have already been furnished by the county; such room, lights, and fuel shall be charged to the county.

SEC. 329. After a jury has retired, if they so decree, they may be brought before the court for further instructions.

SEC. 330. After the case has been submitted to the jury, if they can not agree, or one of the jury becomes so sick as to be unable to perform his duties as a juror, the jury may be discharged.

SEC. 331. In all cases where a jury are discharged or prevented from giving a verdict from any cause, except when the defendant is discharged from indictment during the progress of the trial, or after the cause is submitted to them, for want of jurisdiction in the court, or because the Territory has failed to make out a case, or when the defendant has made good his plea, the case may be again tried at the same or another term of court.

SEC. 332. While the jury are absent considering the cause submitted to them, the court may adjourn from time to time, as to other business; but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

SEC. 333. When the jury agree upon a verdict, they must be brought into court and their names called by the clerk, and if all be present, their foreman shall deliver their verdict to the court, who may, with their consent, in their presence correct the same as to matters of form; the court shall deliver the verdict to the clerk, who shall file and record the same, and then read the same to the jury, and ask them if the verdict as recorded is their verdict; if all of the jury assent thereto, they shall be discharged.

SEC. 334. If either party desire it, the jury may be polled, and if it be found that the verdict presented by the jury is not the verdict of the whole jury, the court may send the jury back to their room to further consider the case, or discharge the same, in its discretion.

SEC. 335. Any juror who shall fail to declare his dissent to the verdict, when the same is read to him by the clerk, if he do so dissent, may be dealt with by the court for contempt.

Sec. 336. When the jury return a verdict of not guilty, the defendant must be discharged at the time; but if they return a verdict of guilty, the defendant may be committed to the custody of the proper officer, and at the same time required to appear on some day certain, to receive the judgment of the court.

Sec. 337. When a defendant is committed, his bail shall be exonerated, or any money deposited to secure his appearance refunded.

Sec. 338. On the trial of an indictment, exceptions may be taken by the defendant to any decision of the court upon matters of law affecting his substantial rights.

Sec. 339. The district attorney, or any counsel for the Territory, may except to any decision of the court upon a question of law, in admitting or rejecting witnesses, or testimony, or in deciding any question of law, not a matter of discretion, or in giving or refusing any instructions to the jury, when the case is finally submitted to them.

Sec. 340. If, upon appeal to the supreme court in any criminal case, on the part of the Territory, it is found that the district court committed an error which should reverse the case, and a new trial be granted, it shall not be considered that the defendant was put in jeopardy by the former trial.

Sec. 341. Upon the trial of any indictment for any offence, when by law there may be conviction of different degrees of such offence, the jury, if they convict the defendant, shall specify in their verdict of what degree of the offence they find the defendant guilty.

Sec. 342. When the indictment charges an offence against the property of another, by robbery, theft, fraud, embezzlement, or the like, the jury, on conviction, shall ascertain and declare in their verdict the value of the property taken, embezzled, or received, and the amount restored, if any, and the value thereof; but their failure to do so shall in nowise affect the validity of their verdict.

Sec. 343. In all cases of a verdict of conviction for any offence, when by law there is any alternative or discretion in regard to the kind or extent of punishment to be inflicted, the jury may assess and declare the punishment in their verdict; and the court shall render a judgment according to such verdict, except as hereinafter provided.

Sec. 344. When a jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment by their verdict, or assess a punishment not authorized by law, and in all cases of judgment by confession, the court shall assess and declare the punishment, and render judgment accordingly.

Sec. 345. If the jury assess a punishment, whether of imprisonment or fine, below the limit prescribed by law, for the offence of which the defendant is convicted, the court shall pronounce sentence, and render judgment, according to the lowest limit prescribed by law, in such case.

Sec. 346. If the jury assess a punishment, whether of imprisonment or fine, greater than the highest limit declared by law, for the offence of which they convict the defendant, the court shall disregard the excess, and pronounce sentence, and render judgment, according to the highest limit prescribed by law in the particular case.

Sec. 347. The court shall have power in all cases of conviction, to reduce the extent or duration of the punishment assessed by a jury, if, in its opinion, the conviction is proper, and the punishment assessed is greater than, under the circumstances of the case, ought to be inflicted.

CHAPTER XIII.

PROCEEDINGS AFTER TRIAL AND BEFORE JUDGMENT.

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Sec. 356. *Motion to arrest judgment; what is; causes for.*
Sec. 357. *Court may arrest judgment.*
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SEC. 348. A bill containing the exceptions must be settled and signed by the judge, and filed with the clerk of the court, within ten days after the trial of the cause, unless further time be granted for good cause by the judge, or one of the justices of the supreme court.

SEC. 349. The bill of exceptions shall contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken, and the judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence and other matters not material or pertinent to the questions raised.

SEC. 350. The bill of exceptions must be filed with the clerk of the court, as soon as signed by the judge.

SEC. 351. A new trial is a re-examination of the issue in the same court.

SEC. 352. The granting of a new trial places the parties in the same position as if no trial had been had. The former verdict can not be used, or referred to, either in the evidence or argument.

SEC. 353. The court may grant a new trial, for the following causes, or any of them:

First. When the jury has received any evidence, papers, or documents not authorized by the court, or the court has admitted illegal testimony, or for newly-discovered evidence.

Second. When the jury has been separated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case.

Third. When the verdict has been decided by means other than a fair expression of opinion on the part of all the jurors.

Fourth. When the court has misdirected the jury in a material matter of law.

Fifth. When the verdict is contrary to law or evidence; but no more than two new trials shall be granted for this cause alone.

SEC. 354. The application for a new trial must be made before judgment.

SEC. 355. If the defendant desires to make a motion for a new trial, he must file a written notice of such intention within twenty-four hours after the rendition of the verdict.

Sec. 356. A motion in arrest of judgment is an application on the part of the defendant, that no judgment be rendered on a verdict of guilty, or finding of the court; and may be granted by the court for either of the following causes:

First. That the grand jury who found the indictment had no legal authority to inquire into the offence charged, by reason of it not being within the jurisdiction of the court.

Second. That the facts stated do not constitute a public offence.

Sec. 357. The court may also, in its view of any of these defects, arrest the judgment without motion.

Sec. 358. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found, except in cases otherwise provided for.

Sec. 359. When judgment is arrested in any case, and there is reasonable grounds to believe that the defendant can be convicted of an offence, if properly indicted, the court may order the defendant to be recommitted, or admitted to bail, anew, to answer a new indictment.

CHAPTER XIV.

JUDGMENT AND EXECUTION.

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Sec. 360. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment be not arrested, or a new trial granted, the court shall appoint a time for pronouncing judgment.

Sec. 361. The time appointed shall be at least two days after the verdict, if the court remain in session so long; if not, then as remote a time as can conveniently be allowed.

Sec. 362. For the purposes of judgment, if the conviction be for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence, except where the punishment is by imprisonment.

Sec. 363. When the defendant is convicted of any offence, if he be in custody, the court may direct the officer in whose custody he is to bring him before it for judgment.

Sec. 364. If in any case the defendant be not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in the Territory, as a warrant of arrest in other cases.

Sec. 365. When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him.

Sec. 366. If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it shall thereupon be rendered.

Sec. 367. When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed to the jail of the county until the same be paid.

Sec. 368. In all cases in which the prosecutor shall be adjudged to pay the costs, he shall be sentenced to pay the costs of the prosecution, or give security to the sheriff to pay the same in ten days, and stand committed until the sentence be complied with.

Sec. 369. Any person imprisoned for failure to pay any fine or costs, shall be discharged after being imprisoned one day for every five dollars of the fine and costs, if it appear by affidavit or other proof that such person is unable to pay the same; but execution may issue against the property of the defendant or prosecutor, as on other judgments.

Sec. 370. Whenever judgment upon a conviction shall be rendered in any court, the clerk of such court shall enter such judgment fully in the minutes, stating briefly the offence for which conviction shall have been had, and the court shall inspect such entries and conform them to the facts; but the omission of this duty, either by the clerk or judge, shall in nowise affect or impair the validity of the judgment.

SEC. 371. Whenever a sentence of imprisonment in a county jail shall be pronounced upon any person convicted of any offence, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county a transcript of the entry of such conviction and of the sentence thereupon, duly certified by such clerk, which shall be sufficient authority to such sheriff to execute such sentence, and he shall execute the same accordingly.

SEC. 372. When any criminal shall be sentenced to any punishment, the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall, without delay, either in person or by deputy, cause such criminal to receive the punishment to which he was sentenced.

SEC. 373. Such sheriff or deputy, while conveying the criminal to the place of punishment, shall have the same power and like authority to require the assistance of any citizen of the Territory in securing such criminal, and retaking him if he shall escape, as such sheriff or deputy has in any other case; and all persons who shall neglect or refuse to assist such sheriff or deputy, when required, shall be liable to the same penalties as for similar refusals in other cases.

SEC. 374. Whenever any criminal shall be sentenced to the punishment of death, the court shall cause to be made out, sealed and delivered to the sheriff of the county, a warrant, stating such conviction and sentence, and appointing a day on which such sentence shall be executed, which shall not be less than four nor more than eight weeks from the time of the sentence.

SEC. 375. The punishment of death prescribed by law must be inflicted by hanging by the neck, at such time as the court may adjudge.

SEC. 376. When execution of such sentence is respited to a further day by the governor, the sheriff must note the same on the warrant, and the defendant must be detained in custody until the day to which the respite is granted, at which time the sheriff, unless the judgment is revoked, or the defendant is pardoned, must execute the sentence, between the hours specified in the judgment, and return the warrant with the respite.

SEC. 377. The sentence of death shall be executed in some private enclosure, as near the jail as possible. The sheriff shall invite to be present at the execution, by at least three days' notice, the judge of the court, the attorney prosecuting, and the clerk of the court, together with two physicians, and twelve reputable citizens to be selected by him. He must also, at the request of the prisoner, permit any minister of the gospel whom the prisoner may name, and any of his relations and friends whom he may desire, not exceeding two, to attend the execution, and also such peace officers as the sheriff may deem proper. No person other than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

SEC. 378. For good cause shown, the court in which the conviction is had, or the governor, may prolong the time or suspend the execution of any criminal sentenced to the punishment of death; and no other court or officer shall have such authority, except in the cases and in the manner hereinafter provided.

Sec. 379. If, after any criminal be sentenced to the punishment of death, the sheriff shall have cause to believe that such criminal has become insane, he may summon a jury of twelve competent jurors, with the concurrence of the judge of the court by which the judgment was rendered, to inquire into such insanity, giving notice thereof to the attorney prosecuting.

Sec. 380. The attorney prosecuting shall attend such inquiry, and may produce witnesses before the jury, and may cause subpœnas to be issued by the clerk for that purpose; and disobedience thereto may be punished by the district court in the same manner as in other cases.

Sec. 381. The inquisition of the jury shall be signed by them and by the sheriff. If it be found that such criminal is insane, the sheriff shall suspend the execution of the sentence until he receive a warrant from the governor, or from the supreme or district court, as hereinafter authorized, directing the execution of the criminal.

Sec. 382. The sheriff shall immediately transmit such inquisition to the governor, who may, as soon as he shall be convinced of the sanity of such criminal, issue a warrant appointing a time and place for the execution, pursuant to his sentence, or he may, in his discretion, commute the punishment to imprisonment for life.

Sec. 383. If, after any female criminal is sentenced to the punishment of death, the sheriff shall have reason to suspect that she is pregnant, he shall, in like manner, summon a jury of six persons, not less than three of whom shall be physicians, and shall give notice to the attorney prosecuting, who shall attend, and the proceedings shall be had as provided in the second preceding section.

Sec. 384. The inquisition shall be signed by the jury and the sheriff, and if it appear that such female is quick with child, the sheriff shall, in like manner, suspend the execution of her sentence, and transmit the inquisition to the governor.

Sec. 385. Whenever the governor and court shall be satisfied that the cause of such suspension no longer exists, the governor shall issue his warrant, appointing a day for the execution of such criminal, pursuant to her sentence, or he may, in his discretion, commute her punishment to imprisonment for life.

Sec. 386. Whenever, for any reason, any criminal sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the supreme court, or the district court of the county in which the conviction was had, on the application of the attorney prosecuting, shall issue a writ of *habeas corpus* to bring such criminal before such court; or if he be at large, a warrant for his apprehension may be issued by such court, or any judge thereof.

Sec. 387. Upon such criminal being brought before the court, he shall proceed to inquire into the facts, and, if no legal reason exists against the execution of such sentence, such court shall issue a warrant to the sheriff of the proper county, commanding him to do execution of the sentence, at such time as shall be appointed therein; which shall be obeyed by the sheriff accordingly.

SEC. 388. It shall be the duty of the clerk of the district court, at the end of each term, to issue executions for all fines imposed, and the costs of convictions in criminal cases during the term and remaining unpaid, which shall be executed in the same manner as executions in civil cases, and the property of the defendant and his bail may be seized and sold thereon, notwithstanding the defendant may be in custody for the same demand.

SEC. 389. When judgment of fine and costs is entered against a defendant, and it is ordered that he be committed until the same shall be paid, if the defendant prove to the court, or judge thereof, by his own affidavit, or that of any person, that he is unable to pay such fine and costs, or any part thereof, the court, or judge thereof, may order the sheriff to release him, upon his having been confined in jail one day for every five dollars of such fine and costs, or any portion thereof remaining unpaid; but if the defendant do not prove to the satisfaction of the court, or judge thereof, that he is unable to pay such fine and costs, or any part thereof, he shall not be released from confinement, except as hereafter provided, unless the sheriff has made the same upon execution out of his property.

SEC. 390. Whenever any defendant shall have been committed to jail for the failure to pay any fine and costs adjudged against him, and has failed to prove to the satisfaction of the court, or judge thereof, that he is unable to pay the same, or any part thereof, the court may, upon the joint recommendation of the grand jury and prosecuting attorney for the county, order that he be discharged from custody when he shall have served one day for every two dollars of such fine and costs.

SEC. 391. Judgment shall not be entered against any defendant while he is insane.

SEC. 392. If any defendant, upon whom the court is about to pass judgment, declare that he is insane, the court, if he finds there is reasonable cause for believing the declaration, may order a jury to be impannelled to determine the fact; and witnesses may be introduced on the part of the defendant and the Territory. If the jury find that the defendant is insane, the court shall order him to be placed in the custody of the person provided by law for the keeping of insane persons; if no such person be provided, then to the custody of some suitable person. Whenever it shall appear to the satisfaction of the court that such person has become sane, he shall order him to be produced for judgment.

CHAPTER XV.

APPEALS.

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Sec. 393. An appeal to the supreme court may be taken by the defendant, as a matter of right, from any judgment against him, and, upon appeal, any decision of the court or intermediate order, made in the progress of the case, may be reviewed.

Sec. 394. An appeal from a judgment in a criminal action, may be taken in the manner and in the cases prescribed in this chapter.

Sec. 395. Appeal to the supreme court may be taken by the Territory in the following cases, and no other:

First. Upon a judgment for the defendant in quashing or setting aside an indictment.

Second. Upon an order of the court arresting the judgment.

Third. Upon a question of law reserved by the Territory.

Sec. 396. The appeal must be taken within six months after the judgment is rendered, and the transcript must be filed within thirty days after the appeal is taken.

Sec. 397. An appeal is taken by the service of a notice upon the clerk of the court where the judgment was entered, stating that the appellant appeals from the judgment. If taken by the defendant, a similar notice must be served upon the attorney prosecuting. If taken by the Territory, a similar notice must be served upon the defendant, if he can be found in the county; if not found, by posting up a notice three weeks, in the clerk's office.

Sec. 398. An appeal taken by the Territory in no case stays or affects the operation of the judgment in favor of the defendant until the judgment is reversed.

Sec. 399. An appeal taken to the supreme court, from a judgment of conviction, does not stay the execution, except when the judgment is for a fine, or fine and costs only, in which case the execution may be stayed by an order of the supreme court, or a judge thereof.

Sec. 400. In case of an appeal from a question reserved, on the part of the Territory, it is not necessary for the clerk of the court below to certify, in the transcript, any part of the proceedings and records, except the bill of exceptions and the judgment of acquittal. When the question reserved is defectively stated, the supreme court may direct any other part of the proceedings and record to be certified to them.

Sec. 401. An appeal shall stand for trial immediately after filing the transcript, if the supreme court is in session; if not in session, at the next term thereafter, on proof of notice of appeal to the appellee.

Sec. 402. When several defendants are tried jointly, any one or more of them may take an appeal; but those who do not join in the appeal shall not be affected thereby.

SEC. 403. The appellate court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial. In either case the cause must be remanded to the court below, with proper instructions and the opinion of the court, within the time and in the manner to be prescribed by rule of court.

SEC. 404. When a judgment against the defendant is reversed, and it appears that no offence whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offence, although defectively charged in the indictment, the supreme court must direct the prisoner to be returned, and delivered over to the jailor of the proper county, there to abide the order of the court in which he was convicted.

SEC. 405. On an appeal, the court must give judgment, without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

SEC. 406. An appeal shall not be dismissed for any informality or defect in the taking thereof. If the same be corrected within a reasonable time after an appeal has been dismissed, another appeal may be taken.

SEC. 407. On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court shall direct.

SEC. 408. All opinions of the supreme court in criminal prosecutions must be given in writing, and recorded in the order book.

CHAPTER XVI.

COSTS IN CRIMINAL CASES.

Sec. 409. *Costs against defendant unsatisfied, paid by county; duty of district attorney, judge, and commissioners, as to costs.*
Sec. 410. *Costs, in offence less than felony, if person discharged.*
Sec. 411. *Costs if felony charged, and defendant discharged.*
Sec. 412. *If defendant acquitted on indictment, jury to determine costs.*
Sec. 413. *Cases not otherwise provided, county to pay costs.*
Sec. 414. *In case of conviction, Territory to pay no costs.*
Sec. 415. *Subpœnas for witnesses in criminal cases; costs.*
Sec. 416. *If witness once recognized or subpœnaed; costs.*
Sec. 417. *Costs for ironing prisoner, medical services, etc., paid by county.*
Sec. 418. *Fines, penalties, and forfeitures; to whom paid.*
Sec. 419. *Duty of clerk to tax costs.*
Sec. 420. *Duty of sheriff to make out fee bill, and deliver to prosecuting attorney; prosecuting attorney's duties thereon.*
Sec. 421. *Clerk to keep attendance of jurors, and certify.*
Sec. 422. *Attendance of witnesses made under oath; county to pay clerk for certain services.*

SEC. 409. In case the defendant shall be acquitted, or in case he shall be convicted, the executions shall issue against him for the costs, and shall be returned unsatisfied in whole or in part, the costs remaining unpaid shall be paid by the county in which the offence was committed; and in case the conviction or acquittal shall be in a county other than that in which the offence was committed, it shall be the duty of the judge before whom the trial was had, and the district attorney prosecuting such defendant, to certify under their hand, authenticated by the seal of the court, the amount of such costs; and it shall be the duty of the board of county commissioners of the county in which such offence was committed, to audit and allow the amount of such costs, and issue an order therefor upon the county treasurer of such county. In all cases, except for a felony, when the indictment shall be returned "not a true bill," the prosecutor shall be adjudged to pay the costs, unless the grand jury shall determine that the county, and not the prosecutor, shall pay the same. The opinion of a majority of the grand jury, certified by their foreman, stating who shall be liable for costs, shall be conclusive on the court rendering judgment in the case.

Sec. 410. If any person charged with an offence less than a felony shall be discharged by the officer taking his examination, the costs shall be paid by the prosecutor, or person on whose oath or information the same shall have been instituted, unless the officer shall certify that there was probable cause for the prosecution, in which event they shall be paid by the county in which the offence was committed. When the prosecutor is condemned to pay the costs, the officer taking the examination shall issue execution for them forthwith, if demanded. When the bill of costs shall be certified to the tribunal transacting county business, for payment, the same shall be strictly examined by the tribunal, and no allowance shall be made but for such services as are expressly compensated by law.

Sec. 411. If a person charged with a felony shall be discharged by the officer taking his examination, or if recognized or committed for any such offence, and no indictment be preferred against him, the costs shall be paid by the county, which shall be certified for allowance, in the manner hereinafter declared.

Sec. 412. If, upon the trial of an indictment whereon the name of the prosecutor is endorsed as such, according to law, the jury shall acquit the defendant, they shall determine and return, together with their verdict, whether the prosecutor or the county shall pay the costs, and the court shall render judgment accordingly.

Sec. 413. In all cases, not herein otherwise provided for, the costs shall be paid by the county in which the offence was committed.

Sec. 414. Whenever any person shall be convicted of any crime or misdemeanor, no costs incurred on his part, except fees for board, shall be paid by the county or Territory, except as herein otherwise provided.

Sec. 415. No subpœna for a witness in any criminal case shall be issued, unless the name of such witness is endorsed on the indictment, or the attorney prosecuting, or the prosecutor in the cause, or the defendant or his attorney shall order the same; and no subpœna shall be issued for any witness, unless the accused is in custody, or on trial, or unless the clerk shall be satisfied that he will be in attendance on the court, at the return term of the process; and all costs unnecessarily incurred by a violation of this section shall be taxed against the clerk.

SEC. 416. Whenever a witness in a criminal case is once recognized or subpœnaed, he shall attend under the same until he is discharged by the court; and no costs shall be allowed for any subsequent recognizance or subpœna against the same witness.

SEC. 417. Whenever the tribunal transacting county business of any county of which the offender shall have committed any crime, for which he is imprisoned, may be satisfied of the necessity of so doing, may make an allowance for ironing the prisoner, and may allow a moderate compensation for medical services, fuel, bedding, and menial attendance, for any prisoner, which shall be paid out of the county treasury.

SEC. 418. All fines and penalties imposed, and all forfeitures incurred in any county, shall be paid into the treasury thereof, for the benefit of said county.

SEC. 419. The clerks of the several courts in the Territory in which any criminal cause shall have been determined or continued generally, and in which the Territory or county shall be liable for costs, shall, before the next succeeding term, tax all costs which shall have accrued in the same, and make out and deliver to the attorney prosecuting in said court, within the time aforesaid, a complete fee bill, specifying each item of service, and the fee therefor; and if any clerk fail to perform the duties hereby enjoined on him, any person injured by such neglect, may, by motion in said court, giving two days' notice thereof to such clerk or his deputy, recover against the clerk treble the amount of costs to which he is entitled in the cause, in which the clerk shall have failed to make out and deliver to the prosecuting attorney a fee bill.

SEC. 420. It shall be the duty of the sheriff of any county to make out a bill of all fees due him in any criminal case, or for summoning any grand or petit jury in a criminal action, within twenty days after the close of each term of the court, during which such fees were incurred by the county, and to present the same to the attorney prosecuting for such county, who shall ascertain, as far as practicable, whether the services have been rendered for which charges are made, and whether compensation is expressly given by law for the services charged, or whether greater charges are made than the law authorizes; and if he find that the said fee bill has been made out in conformity with law, he shall so certify in his official capacity; if he do not so find, he shall point out to the sheriff wherein such bill is incorrect; if the sheriff fail to obtain such certificate from the district attorney, the county commissioners, or other tribunal transacting county business, may refuse to allow the same, unless it appear to them that the district attorney has acted unfairly, or has been mistaken in the premises.

SEC. 421. The clerk of the district court shall keep the time of attendance of all jurors in criminal cases, and shall certify the same to the county clerk.

SEC. 422. Witnesses in criminal cases shall make out a bill under oath, of the fees to which they are entitled in each case, and file the same with the clerk of the district court, and the county shall pay such clerk for the services in this and the preceding section. *Provided*, That no witness shall receive fees in any more than one criminal case on the same day during the same term of court.

NOTE.—Act of February 12th, 1874.

CHAPTER XVII.

WITNESSES.

Sec. 423. *Witnesses; how served.*
Sec. 424. *Of disobedience to subpœna.*
Sec. 425. *Witnesses to attend from any part of Territory; fees.*
Sec. 426. *Right of defendant to process for witnesses.*
Sec. 427. *Not necessary to tender fees to witness.*
Sec. 428. *Depositions; how taken and read.*
Sec. 429. *When deposition taken by defendant.*

Sec. 423. Witnesses shall be served with subpœna in the same manner as in civil cases.

Sec. 424. Disobedience to a subpœna, or a refusal to answer as a witness, may be punished by the court or magistrate as a contempt in the same manner as in civil cases.

Sec. 425. Witnesses may be required to attend from any part of the Territory in criminal cases, and be entitled to the same fees as witnesses in civil cases.

Sec. 426. Every person indicted or prosecuted for a criminal offence shall be entitled to subpœnas and compulsory process for witnesses in like manner, and under like circumstances, as parties in civil cases.

Sec. 427. It shall not be necessary to pay or tender any fees whatever to any witness summoned on the part of the Territory, or on the part of the defendant, but such witness shall be bound to attend, and be liable for his non-attendance in the same manner as if the fees allowed witnesses had been duly paid to him.

Sec. 428. The depositions shall be taken and returned in the same manner prescribed by law in civil cases; and such depositions shall be read in like cases and with like effect and subject to the same rules as in civil cases.

Sec. 429. When any issue of fact is joined to any criminal case, if any material witness for the defendant resides out of the Territory, *enciente*, sick, or infirm, or is bound on a voyage, or is about to leave the Territory, such defendant may apply to the court in which the cause is pending for leave to take the deposition of such witness, and the court may grant the same in its discretion. Such deposition, if taken, shall be taken according to the rules prescribed for taking depositions in civil cases.

CHAPTER XVIII.

MISCELLANEOUS PROVISIONS.

Sec. 430. *When stolen or embezzled property is concealed.*
Sec. 431. *Search warrant to issue.*
Sec. 432. *Place or house searched on proof.*
Sec. 433. *Warrant; by whom executed.*
Sec. 434. *Person committed to jail may be searched.*
Sec. 435. *Officer shall hold property alleged to be stolen.*

Sec. 436. *Magistrate may order such property delivered to owner.*
Sec. 437. *If such property in custody of magistrate, delivered to owner on payment of expenses, etc.*
Sec. 438. *Court may order property delivered to owner.*
Sec. 439. *If property not claimed may be sold.*
Sec. 440. *If property living animal, or perishable, may be sold.*
Sec. 441. *Case of sale under last section, description of property filed.*
Sec. 442. *Warrants in criminal cases; how signed.*
Sec. 443. *Recognizance; how executed.*
Sec. 444. *Conveyance of prisoner from one county to another.*
Sec. 445. *Rights and power of officer conveying prisoner.*
Sec. 446. *Jailor to receive prisoner in transit when required.*
Sec. 447. *Duty of governor in making requisition for fugitive.*
Sec. 448. *Expenses under last section; how paid.*
Sec. 449. *Jury may view place where material fact occurred.*
Sec. 450. *Officer may break enclosure to make arrest; when.*
Sec. 451. *If officer corruptly select jury; cause of challenge.*
Sec. 452. *All processes of district court executed by sheriff.*
Sec. 453. *Territorial prison; keeper to return prisoner for new trial; fees therefor.*
Sec. 454. *Term "person" may include Territory, United States, etc.*
Sec. 455. *Definitions of terms, of pleading and practice adopted.*
Sec. 456. *If money deposited, instead of bail, may be returned; when.*
Sec. 457. *Governor may offer reward for fugitive; when.*
Sec. 458. *Person returning fugitive; how compensated.*
Sec. 459. *Governor may include conditions in pardon.*
Sec. 460. *Limitation; pendency of quashed indictment not counted.*
Sec. 461. *Property liable for costs when arrest made.*
Sec. 462. *Property liable of person signing recognizance.*
Sec. 463. *Insane person not to be tried.*
Sec. 464. *If defendant declare he is insane when arraigned, court to institute inquiry.*
Sec. 465. *If sane, trial to proceed; if insane, retained in custody.*
Sec. 466. *If become sane, returned to court and tried.*
Sec. 467. *Costs of keeping insane defendant; how paid.*

SEC. 430. Upon complaint being made on oath to any officer authorized to issue process for the apprehension of offenders, that any personal property has been stolen or embezzled, and that the complainant has reason to believe that such property is concealed in any particular house or place, if such magistrate shall be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property.

SEC. 431. Such warrant shall be directed to the sheriff of the county, and shall command him to search the place where such property is suspected to be concealed in the day time, which place shall be designated, and the property particularly described in such warrant, and to bring such property before the magistrate issuing the warrant.

SEC. 432. If there be positive proof that any property stolen or embezzled is concealed in any particular place or house, the warrant may order the searching of such place or house.

SEC. 433. Every such warrant shall be executed by a public officer, and not by any other person.

SEC. 434. Any magistrate who shall commit any person charged with an offence to jail, or by whom any vagrant or disorderly person may be committed, may cause such person to be searched for the purpose of discovering any money or property he may have, and, if any be found, the same may be taken and applied to the support of such person while in confinement.

SEC. 435. When property alleged to have been stolen shall come into the custody of any sheriff, coroner, constable, marshal, or any person authorized to perform the duties of such officer, he shall hold the same, subject to the order of the officer authorized to direct the disposition thereof.

SEC. 436. Upon receiving satisfactory proof of the title of any owner of such property, the magistrate who shall take the examination of the person accused of any of the offences referred to in the preceding section, may order the same to be delivered to such owner on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property.

SEC. 437. If such property come into the custody of any magistrate, upon satisfactory proof of the title of any owner thereof, it shall be delivered to him on the payment of the necessary expenses incurred in the preservation thereof, to be certified by such magistrate.

SEC. 438. If such property shall not have been delivered to the owner thereof, the court before which a conviction shall be had for the stealing, embezzling, or obtaining such property, may, upon proof of the ownership of any person, order the same to be restored to him, on the payment of the expenses incurred in the preservation thereof.

SEC. 439. If such property shall not be claimed by the owner within six months from the time any person shall have been convicted of obtaining it in any of the modes referred to in this act, the court or magistrate authorized by the preceding provisions to order a restoration may order the same to be sold; and the proceeds of the sale, after payment of the expenses of preservation and sale of the property, shall be paid into the county treasury for the use of the county.

SEC. 440. If the property thus obtained be a living animal, or be of a perishable nature, the court or magistrate authorized to order a restoration may order a sale thereof, and the proceeds shall be applied in the same manner hereinbefore directed in respect to such property.

SEC. 441. In case of sale, as specified in the last section, a particular description of the property shall be made out in writing, and filed with the court or officer making the order of sale, so that the owner may identify the same, if he shall claim the proceeds within the time limited by law for making his claim.

SEC. 442. Warrants authorized by law to be issued in criminal cases may be under the hand of the magistrate issuing the same, and shall be as valid and effectual in all respects as if sealed.

SEC. 443. All recognizances required or authorized to be taken in any criminal proceedings in open court by any court of record, shall be entered on the minutes of such court, and the substance thereof shall be read to the person recognized; all other recognizances in any criminal matter or proceeding, or in any proceeding of a similar nature, shall be in writing, and subscribed by the parties to be bound thereby.

SEC. 444. Every officer or other person who shall have arrested, or have in his custody, under authority of the laws of this Territory, any prisoner who is to be conveyed from one county to another, may take such prisoner through such parts of any county as shall be in the ordinary route of travel from the place where such prisoner shall have been arrested to the place where he is to be conveyed and delivered, under the process or authority by which such prisoner shall have been arrested or detained.

SEC. 445. The officer or person having such prisoner in charge shall not be liable to arrest in civil process while on his route; and he shall have the like power to require any person to aid in securing such prisoner, and retaking him if he escapes, as sheriffs or other officers have in their own county; and a refusal or neglect to render such aid shall be an offence punishable in the same manner as for disobediance to a summons to assist in the execution of a process.

SEC. 446. The jailer of every county through which such prisoner may be taken is required to receive and safely keep such prisoner in the jail of which he has charge, when requested by the officer or person having lawful charge of such prisoner, and re-deliver him on demand of such officer or person.

SEC. 447. Whenever the governor of this Territory shall demand a fugitive from justice from the executive of another State or Territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the Territory, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offence was committed or is by law cognizable.

SEC. 448. The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed, and paid out of the Territorial treasury, as other demands against the Territory.

SEC. 449. Whenever, in the opinion of the court, it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the officer and a person appointed to show them the place shall speak to them on any subject connected with the trial.

SEC. 450. To make an arrest in criminal actions, the officer may break open any outer or inner door or window of a dwelling house, or other building, or any other enclosure, if, after notice of his office and purpose, he be refused admittance.

SEC. 451. When the sheriff or other officer is guilty of corruption in selecting or impannelling a grand or traverse jury, it is good cause of challenge to any of the jurors so selected or impannelled.

SEC. 452. Every judgment, commitment, and process of the district court must be executed by the sheriff.

SEC. 453. When any criminal in the Territorial prison is ordered to be returned to the county where he was convicted to await a new trial, the keeper of the Territorial prison must execute the order. The keeper is entitled to such fees therefor as are allowed to the sheriff for taking the convict to the Territorial prison.

SEC. 454. When the term "person" or other word is used to designate the party whose property is the subject of an offence, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this Territory, or any other State or Territory, or any public or private corporation, as well as an individual.

SEC. 455. All the definitions of terms in the act prescribing the rules of pleading and practice in civil actions, are adopted in this act so far as they are applicable.

SEC. 456. If money has been deposited instead of bail, and the defendant at any time before the forfeiture thereof shall give sufficient special bail, or shall surrender himself in open court, or to the sheriff, as provided in this act, or be in any manner legally discharged, the clerk shall return the deposit.

SEC. 457. If any person charged with, or convicted of, a felony, shall break prison, escape, or flee from justice, and abscond and secrete himself, the governor of the Territory may, if he deems it expedient, offer any reward, not exceeding one thousand dollars, for the apprehension and delivery of such person to the custody of such sheriff or other officer as he may direct.

SEC. 458. When any person shall apprehend and deliver such fugitive to the proper sheriff or officer, he shall take his certificate of such delivery, and the governor, on the production of such certificate, shall certify the amount of the claim to the auditor of public accounts.

SEC. 459. In all cases in which the governor is authorized by law to grant pardons, he may grant the same on such conditions, terms and restrictions as he may deem proper, and if the person so pardoned shall violate such conditions, or terms, or disregard such restrictions, the governor shall have the power and it shall be his duty, to revoke such pardon. And such violation of the conditions, terms, or restrictions, or any part thereof, shall be considered an escape and fraud, and the governor shall issue his warrant, directed to the sheriff of the county where the person so pardoned may be, commanding him to re-arrest such person and commit him to the penitentiary or prison in which he was confined prior to such pardon, to serve out the balance of the term for which he may have been sentenced. And such sheriff shall receive such fees out of the Territorial treasury as are allowed by law to sheriffs for serving warrants and commitments, and the auditor shall draw his warrant on the general fund for such fees on the treasurer, on presentation of a certificate from the governor that the same is correct.

NOTE.—Act May 8th, 1873.

SEC. 460. When any indictment or prosecution shall be quashed, set aside, or reversed, the time during which the same was pending shall not be computed as part of the time of the limitation prescribed for the offence.

SEC. 461. In all cases when a person shall be arrested for any criminal offence, his real estate and mining claims shall be liable for the payment of any judgment imposing any fine or costs upon such person, and such judgment shall be a lien on such real estate or mining claims from the time of such arrest.

SEC. 462. The real estate and mining claims of all persons who sign or enter into any recognizance for the appearance of any person charged with any criminal offence shall, if such recognizance be forfeited, be liable for the payment of any judgment which may be recovered thereon, and such judgment is hereby declared to be a lien upon such property from date of recognizance. Nothing in either of the above sections shall be construed so as to prohibit the issuing of execution and the enforcing of the collection thereof out of any other property of the defendants than above enumerated.

SEC. 463. No person shall be tried for any offence while he is insane.

SEC. 464. If any defendant, at the time he is arraigned, declares he is insane, or there is reasonable cause for believing he is insane, the court shall institute the same proceedings as is provided when a defendant declares he is insane, when called upon to show why judgment of court should not be pronounced against him.

SEC. 465. If the jury find that the defendant is sane, the trial shall proceed; but if insane, the defendant shall be delivered to the custody of the person provided by law for the keeping of the insane, or to the custody of some suitable person.

SEC. 466. If the person to whose custody such insane person is confided, at any time think he has recovered his reason, he shall bring him into court, and deliver him to the proper officer; and if the court is satisfied that such defendant is sane, the trial shall proceed.

SEC. 467. The keeping of an insane defendant, where there is no fund provided by the Territory for the keeping of insane persons, shall be at the expense of the county where the offence was committed.

CHAPTER XIX.

PROCEEDINGS IN PROBATE AND JUSTICE OF THE PEACE COURTS.

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Sec. 489. *One of the defendants may be found guilty; others acquitted.*
Sec. 490. *If more than one defendant tried, jury may agree as to part and disagree as to others; effect of.*
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Sec. 492. *Jury may fix punishment in certain cases; on failure of jury, court to affix.*
Sec. 493. *Court may modify penalty.*
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Sec. 520. *Prosecuting attorney may except to rulings of court.*
Sec. 521. *Territory may appeal.*
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Sec. 524. *Prosecutor taxed with costs may appeal.*
Sec. 525. *Practice in causes commenced before this act takes effect.*
Sec. 526. *Prosecutions after this act takes effect and repealing clause.*
Sec. 527. *When act takes effect.*

SEC. 468. All criminal actions in either the probate or justice of the peace courts shall be presented by complaint.

SEC. 469. The complaint must specify the name of the defendant, if it be known to complainant; and if not known, then he may be designated as "John Doe, whose real name is unknown." The complaint must state generally, the crime of which the defendant is accused, with such particulars of time, place, person, and property as will enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint.

SEC. 470. The complaint may be made by any one having knowledge of the commission of the offence, or by any sheriff, constable, or other peace officer, or by the district attorney. It must be made under oath, when made by the sheriff, constable, or other peace officer, or by the district attorney; he may make oath only, that he is informed and believes that the defendant is guilty of the crime charged.

SEC. 471. When the complaint is filed, the judge or justice of the peace in whose court the same has been filed shall issue a warrant for the arrest of the defendant, if he be not already in custody.

SEC. 472. The defendant must be personally present before the trial can proceed.

SEC. 473. The defendant shall be arraigned by the reading of the complaint to him, and asking him to state his true name.

SEC. 474. When arraigned, the defendant may ask time to plead to or answer the complaint, and the court may grant him not to exceed twenty-four hours.

SEC. 475. It shall be the duty of the court to inform the defendant that he is entitled to the assistance of counsel, and if he be too poor to employ one himself, the court, if he requires it, may appoint some suitable person to act as his counsel.

SEC. 476. The defendant, if he declare that the name given him in the complaint is not his true name, shall make known what it is, and if he fail to do so, he shall not afterward be allowed to raise the objection that he was not complained of under his true name.

SEC. 477. If he give his true name, the court shall make a minute of the same, and thereafter the case shall proceed in that name.

SEC. 478. The defendant may demur, plead or answer to the complaint, in the same manner, and for the same reasons, as a defendant may do to an indictment.

SEC. 479. If a demurrer to any complaint be sustained for any other cause than that of a want of jurisdiction in the court to hear the offence charged, a new complaint may be made against the defendant.

SEC. 480. The defendant may waive a jury trial, and in that event the court may try the case without the intervention of a jury.

SEC. 481. The defendant may consent to less jury than twelve; but unless he so consents, that number must be impannelled.

SEC. 482. Any waiver or consent as to the jury by the defendant, must be made a minute of by the court.

SEC. 483. The qualifications of jurors shall be the same as for jurors in trials under indictments.

SEC. 484. The same number of challenges shall be allowed to individual jurors, and the same challenges to the panel, as are allowed in trials under indictments.

SEC. 485. The court shall decide all matters of law which may arise during the trial, but shall not charge the jury as to questions of fact.

SEC. 486. By consent of parties, the jury, after it is sworn, may separate during the trial, but not after the case is submitted to them.

SEC. 487. The verdict of the jury shall in all cases be general.

Sec. 488. When the jury have agreed upon their verdict, they shall deliver it publicly to the court, who shall enter, or cause to be entered, the same in the minutes of the court.

Sec. 489. When two or more persons are complained of in the same complaint, one or more may be found guilty, and the balance not guilty.

Sec. 490. When several defendants are tried together, if the jury can not agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Sec. 491. When a jury cannot, after sufficient deliberation, agree upon a verdict, they may be discharged and a new jury impannelled to try the cause.

Sec. 492. When the punishment provided for any offence is in the alternative, the jury may fix the same; any neglect on their part to do so will not prevent the court from fixing it.

Sec. 493. If the court deem any penalty fixed by the jury erroneous, he shall have the right to modify the same.

Sec. 494. When a case is tried before the court, and defendant found guilty, or the defendant pleads guilty, the court shall fix the punishment.

Sec. 495. If the court or jury trying any such case shall be of the opinion that the punishment which the court is authorized to inflict is not adequate to the offence committed, they shall so find, whereupon the court shall recognize the defendant and the witnesses to appear in the district court, in the same manner as peace magistrates are authorized to recognize persons and witnesses for offences committed; and the same proceedings shall be had in such cases in the district court as if the examination had not been had before such a magistrate.

Sec. 496. Upon good cause shown by either party, the court may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into a recognizance, with sufficient security, conditioned that he will appear before the court at the time and place appointed, then and there to answer the charge alleged against him.

Sec. 497. If the defendant fail or refuse to enter into a recognizance, the court shall commit him to the jail of the county, there to remain until the day fixed for trial, unless recognizance be given in the meantime.

Sec. 498. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the district court, to be proceeded on as recognizances certified to such court by magistrates.

Sec. 499. In all cases arising under this act, it shall be the duty of the court to summon the injured party, and all others whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary.

Sec. 500. If, in the progress of any trial under the provisions of this chapter, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before the court, he shall stop all further proceedings before him and proceed as a committing magistrate in cases cognizable only in the district court.

SEC. 501. When proceedings are commenced under the provisions of this chapter, on the information or complaint of the injured party, his name shall be entered by the court on his docket as prosecutor; and if the defendant shall be discharged or acquitted, the costs shall be paid by the county unless the court or jury trying the case shall find that there was no probable cause for the commencement of the same, in which case the prosecutor shall pay the costs, and judgment shall be rendered against him accordingly.

SEC. 502. In all cases of conviction, under the provisions of this chapter, the court shall enter his judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, as in cases in the district court.

SEC. 503. Any defendant committed under the provisions of this chapter may be discharged in the same manner as if he had been committed by the district court.

SEC. 504. Any person convicted under the provisions of this chapter may appeal to the district court, at any time within ten days after judgment is rendered, by entering into recognizance with sufficient security, conditioned that he will appear in the district court on the trial therein, and pay all judgments for fine and costs that may be rendered against him in the district court in such case: *Provided*, Said defendant give notice of his intention so to do at the time of the rendition of judgment.

SEC. 505. When an appeal is taken, the court shall immediately make a certified transcript of all his proceedings therein, and transmit the same, together with the papers in said cause, to the clerk of the district court.

SEC. 506. When an appeal is taken according to this chapter, on the day of trial the court shall recognize all material witnesses for their appearance at the district court on the trial of such cause.

SEC. 507. The clerk of the district court shall enter the same on the court docket, in its order with other criminal causes; and the same shall be heard at the next term thereafter, unless, for good cause, the same be continued.

SEC. 508. The costs in both cases shall abide the event of the trial in the district court.

SEC. 509. If the judgment of the court shall be affirmed or modified, or if, upon trial in the district court, the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs, in both courts, against the defendant and his securities.

SEC. 510. All such cases shall be tried anew in the district court.

SEC. 511. If the judgment in the district court be not paid, execution may issue thereon against the defendant and his securities for the fine and costs aforesaid, which shall be made out of the property of the defendant, if sufficient thereof be found, if not, then out of the property of his securities.

SEC. 512. The court shall issue executions for all fines and costs that are not paid in any case before him, which shall be issued, executed, and returned in the same manner as executions issued by justices of the peace, and probate courts, in civil cases. If the county shall have paid the costs in any case, and such costs shall afterward be collected from the defendant, they shall be paid into the county treasury.

SEC. 513. Any justice of the peace, probate court, sheriff, constable, or coroner who shall willfully neglect or refuse to perform any duty enjoined on him by this chapter, shall be deemed guilty of a misdemeanor in office, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

SEC. 514. When a trial, under the provisions of this chapter, shall be continued by the court, it shall not be necessary for the court to summon any witnesses who may be present at the continuance, but said court shall verbally notify such witnesses as either party may require, to attend before him, to testify in the cause, on the day set for the trial, which verbal notice shall be as valid as a summons.

SEC. 515. Any officer charged with the collection of fines, under the provisions of this chapter, shall return the execution to the justice, within thirty days from its delivery to him, and pay over to the justice the money collected thereon, deducting his fees for collection of the same.

SEC. 516. All fines imposed and collected by any court, under the provisions of this chapter, shall be paid by him to the treasurer of the county where the conviction was had, for the use of such county, within thirty days after the receipt of the same, and the justice shall take duplicate receipts therefor, one of which he shall deposit with the county auditor, or officer performing the duties of such office.

SEC. 517. If any court shall fail to pay over such moneys as aforesaid, it shall be the duty of the treasurer of the proper county to prosecute such delinquent justice for the recovery of the same, together with the penalty of twenty per centum thereon, in an action of debt, before any court having jurisdiction thereof.

SEC. 518. When a judgment of imprisonment is rendered by a court, a certified copy of the same shall be delivered to the jailor, which shall be sufficient authority for executing the judgment.

SEC. 519. This act shall not affect any criminal action pending, at the time of the taking effect of the same, but such action shall be made to conform, as near as may be, to the provisions herein contained; otherwise such actions shall be carried on to their final termination, under the laws that were in force at the time of the commencement of the same.

SEC. 520. The attorney acting for the Territory may take exceptions to any ruling of the court, in the same manner as in trials in the district court.

SEC. 521. When the district attorney, or any attorney acting as prosecutor, has taken exceptions to the ruling of the court, in any question of law, the Territory may appeal the same to the district court.

SEC. 522. Appeals to the district court on the part of the Territory, from any judgment of the justice's court, or that of the probate court, shall be taken in the same manner as appeals from a judgment of the district court to the supreme court of the Territory.

SEC. 523. If the district court find that the court below committed any material error in ruling upon any question of law, which materially prejudiced the Territory, the judgment of the court below shall be reversed, and the cause set down for hearing in the district court *de novo*.

SEC. 524. When a court or jury find that there was no probable cause for commencing a prosecution, or that the prosecution was malicious, and the court enters judgment, taxing the costs of the prosecution against the prosecutor, the prosecutor may appeal to the district court from such judgment, and the question tried *de novo* in that court, as to whether there was probable cause for the prosecution, or whether or not the same was malicious.

SEC. 525. All proceedings which shall have been commenced before this act goes into effect, shall be conducted in accordance with the practice heretofore existing.

SEC. 526. As to all prosecutions commenced after this act shall have gone into effect, all acts and parts of acts providing for the prosecution of criminals in the courts of justice in this Territory, be, and the same are hereby, repealed.

SEC. 527. This act to take effect from and after the first day of August, A. D. 1872.

NOTE.—The preceding 527 sections, except where otherwise specially noted, are taken from the Act of January 12th, 1872.

FOURTH DIVISION.

CRIMINAL LAWS.

CHAPTER I.

PERSONS CAPABLE OF COMMITTING CRIMES.

Sec. 1. *Essence of crimes.*
Sec. 2. *How intent manifested.*
Sec. 3. *Idiots and insane persons.*
Sec. 4. *An infant defined.*
Sec. 5. *Counseling infants, idiots, and insane persons.*
Sec. 6. *Married women acting under influence of husband.*
Sec. 7. *Husband inducing wife to commit offence.*
Sec. 8. *Drunkenness not excuse for crime.*
Sec. 9. *Acts committed by accident or misfortune.*
Sec. 10. *Persons committing crimes under threats and menaces.*
Sec. 11. *Persons who induce the commission of crimes by threat, etc., etc.*

SEC. 1. In every crime or public offence, there must be a union or joint operation of act and intention, or of act and criminal negligence.

SEC. 2. The intention is manifested by the circumstances connected with the perpetration of the offence, and the soundness or maturity of the mind of the person committing the act.

SEC. 3. A person who is an idiot, or insane, is of unsound mind, and incapable of forming an intention to commit a crime.

SEC. 4. An infant under the age of fourteen years, unless the contrary be clearly shown, shall be deemed incapable of knowing, sufficiently clearly, the distinction between good and evil, to enable him to form the intention of committing a crime.

SEC. 5. Any person counseling, advising, or encouraging an infant under the age of fourteen years, who does not know sufficiently the distinction between good and evil to enable her or him to commit a crime, or an idiot, or insane person, to perpetrate an offence, shall be deemed to have committed the offence himself, and shall suffer the same punishment as though the crime had been perpetrated without the instrumentality of such infant, idiot, or insane person.

SEC. 6. A married woman, while acting under the threats, command, or coercion of her husband, shall not be deemed to have committed any offence not punishable with death.

SEC. 7. If it shall appear from all of the facts and circumstances connected with the commission of any criminal offence, that any man has induced his wife to commit the same, by means of threats, commands, or coercion, he shall be deemed to have committed the offence himself, and shall be punished accordingly.

Sec. 8. Drunkenness shall not be an excuse for any crime, unless such drunkenness shall have been occasioned by the fraud, contrivance, or force of some other person, for the purpose of causing the commission of the offence; in which case, the person causing such drunkenness for the said purpose, shall be deemed to have committed the crime himself, and shall be punished accordingly.

Sec. 9. All acts committed by misfortune or accident, shall not be deemed criminal, where it satisfactorily appears that there was no evil intention or criminal negligence, and that the person performing the same was not, at the time of the commission thereof, engaged in some felonious enterprise.

Sec. 10. Any person committing a crime, not punishable with death, under threats or menaces, which sufficiently show that his life was in great danger, or that he had reasonable cause for believing, and did believe, that his life was in great danger, shall not be deemed to have committed the crime.

Sec. 11. Any person who shall coerce another to commit a crime, by means of threats and menaces, which shall induce the person committing the act to believe and give him reasonable cause for believing his life to be in great danger, shall be deemed to have committed the crime himself, and shall be punished accordingly.

CHAPTER II.

ACCESSORIES.

Sec. 12. *Who shall be deemed a principal offender.*
Sec. 13. *Concealment of offender; punishment for.*

Sec. 12. Any person who stands by and aids, abets, or assists, or who, not being present, hath advised and encouraged the commission of a crime, shall be deemed a principal offender, and shall be punished accordingly.

Sec. 13. Any person who, after full knowledge that any crime has been committed, conceals the same from any magistrate, sheriff, or other officer of the law, or harbors and protects any person charged with or found guilty of any crime, is an accessory after the fact, and shall be punished by imprisonment in the territorial prison for a term not exceeding two years, and fined in any sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime of the principal offender.

CHAPTER III.

WITNESSES.

Sec. 14. *Party injured, or jointly concerned, competent witness.*
Sec. 15. *Defendant may testify.*
Sec. 16. *Witness may affirm.*
Sec. 17. *Any person present at a duel made witness.*

SEC. 14. The party or parties injured by any criminal act, shall in all cases be competent witnesses, the credibility of the same being left to the jury. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness, for or against the other, in relation to such crime or misdemeanor; but the testimony given by such witness shall in no instance be used against himself in any criminal prosecution. Any person may be compelled to testify as in this section provided.

SEC. 15. Any defendant in a criminal action or proceeding may be allowed to be sworn and testify in his own behalf; in such case the jury, in judging of the credibility of the witness, and the weight to be given to his testimony, shall take into consideration the fact that he is the defendant, and the nature and enormity of the crime of which he is accused; the fact that the defendant does not claim the right to be sworn, shall not be used to his prejudice; and the attorney prosecuting shall not comment on the same to the jury or court.

SEC. 16. The solemn affirmation of witnesses shall be deemed sufficient; a false or corrupt affirmation shall subject the witness to all of the penalties and punishments provided for those who commit willful and corrupt perjury.

SEC. 17. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, surgeon, or spectator, or who shall advise or give assistance to such duel, shall be a competent witness against any person offending against the statute in such case, and may be compelled to appear and give evidence before any justice of the peace, grand jury, or court, in the same manner as other witnesses; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person who so testifies.

CHAPTER IV.

OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

Sec. 18. *Murder; definition of.*
Sec. 19. *Malice; what is.*
Sec. 20. *Malice; when presumed to exist.*
Sec. 21. *Murder of first degree; what deemed.*
Sec. 22. *If in fight, upon previous agreement, death ensue, is murder.*
Sec. 23. *Dueling, if death ensue, murder..*
Sec. 24. *In verdict of murder jury to designate degree.*
Sec. 25. *Penalty for murder.*
Sec. 26. *Manslaughter; definition of.*
Sec. 27. *Voluntary manslaughter; what is.*
Sec. 28. *Involuntary manslaughter; what is.*
Sec. 29. *Penalty for manslaughter.*
Sec. 30. *Party must die within a year and a day.*
Sec. 31. *Where party killing to be tried.*
Sec. 32. *Justifiable homicide; what is.*
Sec. 33. *What sufficient to justify the killing.*
Sec. 34. *As to killing in self-defence.*

Sec. 35. *As to justification of officer or private person in killing a person charged with felony while making arrest.*
Sec. 36. *Unavoidable necessity may justify homicide.*
Sec. 37. *Excusable homicide; what is.*
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Sec. 39. *Homicide appearing justifiable or excusable; accused acquitted.*
Sec. 40. *Burden of proof.*
Sec. 41. *As to concealing death of bastard child.*
Sec. 42. *As to procurement of miscarriage or abortion.*
Sec. 43. *Challenge or acceptance to fight duel.*
Sec. 44. *Malicious poisoning.*
Sec. 45. *Mayhem; what is.*
Sec. 46. *Rape; what is.*
Sec. 47. *Crime against nature.*
Sec. 48. *Kidnapping; definition of.*
Sec. 49. *Kidnapping; what deemed.*
Sec. 50. *Of an attempt to kidnap.*
Sec. 51. *As to enticing or decoying out of Territory any Indian or colored person.*
Sec. 52. *Abduction; what deemed.*
Sec. 53. *Abduction of child.*
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Sec. 55. *Assault; definition of.*
Sec. 56. *Assault with intent to murder, rape, etc.*
Sec. 57. *Assault with deadly weapon.*
Sec. 58. *Assault and battery; definition of.*
Sec. 59. *Assault and battery with cowhide, etc., using weapon to intimidate.*
Sec. 60. *Maliciously or negligently poisoning water.*
Sec. 61. *Of threats, etc., to extort money.*
Sec. 62. *Exhibiting deadly weapon in threatening or angry manner not in self defence.*
Sec. 63. *False imprisonment; what is.*

SEC. 18. Murder is the unlawful killing of a human being, with malice aforethought, either expressed or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

SEC. 19. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

SEC. 20. Malice shall be presumed to exist when no considerable provocation appears, or when all the circumstances of the killing show an abandoned or malignant heart.

SEC. 21. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree, except as hereinafter provided.

Sec. 22. If any person, with or without deadly weapons, upon a previous agreement, fight with another, and death ensue to any person in such contest within a year and a day, the person or persons causing such death shall be deemed guilty of murder in the first degree.

Sec. 23. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot-gun, pistol, bowie-knife, dirk, small-sword, back-sword, or other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and, upon conviction thereof, shall be punished accordingly.

Sec. 24. In all trials for murder the jury shall designate in their verdict the degree of murder of which they find the defendant guilty, except when parties are indicted under either of the two preceding sections.

Sec. 25. Every person who shall be convicted of murder in the first degree shall suffer the penalty of death by hanging; and every person who shall be convicted of murder in the second degree shall suffer the penalty of imprisonment in the Territorial prison for a term of not less than ten years, and which may be extended for life.

Sec. 26. Manslaughter is the unlawful killing of a human being without malice or any mixture of deliberation; it may be voluntary or involuntary.

Sec. 27. Voluntary manslaughter is the killing of a human being by another person upon a sudden heat or passion, caused by a provocation apparently sufficient to make the passion irresistible in a reasonable person. The provocation must be a serious and highly provoking injury, inflicted or attempted to be inflicted upon the person killing, sufficient to excite such an irresistible passion; and the killing must follow so soon after the provocation, that there is not time for the passions to cool; for if there should have been an interval between the provocation given and the killing, sufficient for the voice of reason to be heard, the killing shall be attributed to deliberate revenge, and shall be deemed murder in the first degree.

Sec. 28. Involuntary manslaughter is the killing of a human being by another, without any intention to do so, in the performance of an unlawful act not felonious, or which would not naturally tend to destroy human life; or in the performance of a lawful act, without that due care and caution which every reasonable man should exercise in doing any act which might result in the destruction of human life.

Sec. 29. Every person who shall be convicted of the crime of manslaughter shall be punished by imprisonment in the Territorial prison for a period of time not less than one year, nor more than ten years.

Sec. 30. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke was received, or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first.

Sec. 31. If the injury be inflicted in one county and the party die in another county, or without the Territory, the accused shall be tried in the county where the act was done, or the cause of death administered. If the party killing shall be in one county and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

SEC. 32. Justifiable homicide is the killing of a human being in necessary self-defence, or in defence of habitation, property, or person against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

SEC. 33. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of such fears, and not in a spirit of revenge.

SEC. 34. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had, really and in good faith, endeavored to decline any further struggle before the fatal blow was given.

SEC. 35. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, by reason of such resistance, he or she be killed, the officer or private person so killing, shall be justified: *Provided*, That such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused without success; and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

SEC. 36. Justifiable homicide may also consist in unavoidable necessity without any will or desire, and without any inadvertency or negligence in the party killing. An officer, who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

SEC. 37. Excusable homicide, by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an ax, and the head flies off and kills a by-stander, or where a parent is moderately correcting a child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correcting was lawful; but if a parent or master exceeds the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter, or murder, according to the circumstances of the case.

SEC. 38. All other instances which stand upon the same footing of reason and justice as those enumerated shall be considered justifiable or excusable homicide.

SEC. 39. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

SEC. 40. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused—unless the proof on the part of the prosecution sufficiently manifest that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

SEC. 41. If any woman shall endeavor, privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the Territorial prison for a term not exceeding one year: *Provided, however,* That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

SEC. 42. Every person who shall administer or cause to be administered or taken, or furnished to another to be taken, any medical substance, or shall use or cause to be used any instrument whatever with the intent to procure the miscarriage of any woman then being with child (unless the same shall be done to save the life of such woman), and shall be convicted thereof, shall be punished by imprisonment in the Territorial prison for a term of not less than two years, nor more than five years.

SEC. 43. If any person shall hereafter challenge another to fight a duel with deadly weapons, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 44. Every person who shall willfully and maliciously administer, or cause to be administered to, or taken by, any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than ten years, and which may extend to life.

SEC. 45. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of the body of another, or shall voluntarily, or on purpose, put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the Territorial prison for a term not exceeding fourteen years.

SEC. 46. Rape is the carnal knowledge of a female, forcibly, and against her will, and a person duly convicted thereof shall be punishable by imprisonment in the Territorial prison for a term not less than five years, and may be extended to life. And any person who shall have carnal knowledge of any female child under the age of ten years shall be adjudged guilty of the crime of rape, and, upon conviction thereof, shall be imprisoned for life. And every person of the age of sixteen years or over, who shall have carnal knowledge of any woman above the age of ten years, without her consent, by administering to her any substance or liquid, which shall produce such stupor or imbecility of mind or weakness of body as to prevent effectual resistance, shall, upon conviction, be adjudged guilty of rape, and be punished by imprisonment in the Territorial prison for a term not less than ten years.

SEC. 47. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the Territorial prison for a term of not less than five years, and which may extend to life.

SEC. 48. Kidnapping is the forcible and unlawful taking or the stealing away of a man, woman, or child from his or her own home.

SEC. 49. Every person who shall forcibly take or arrest, unlawfully, or steal any man, woman, or child, either white, colored, or Indian, and carry him or her away from his or her home or place of abode, shall be deemed to have committed the crime of kidnapping, and, upon conviction, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than ten years.

SEC. 50. Every person who shall forcibly and unlawfully take or arrest any person whomsoever, with an intention to take him or her out of this Territory, without having first obtained permission so to do, in accordance with the provisions of law, shall be deemed guilty of an attempt to kidnap, and, upon conviction, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than ten years.

SEC. 51. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, or Indian, to go out of this Territory, or to be taken or removed therefrom for the purpose and with the intent to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, or colored person, or Indian, shall be deemed to have committed the crime of kidnapping, and, upon conviction thereof, shall be punished as in the next preceding section specified.

SEC. 52. Every person who shall take any woman unlawfully against her will, and by force, threats, menaces, or duress, compel her to marry him, or to marry any other person, or to be defiled, shall be deemed to be guilty of the crime of abduction; and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than two years, nor more than fourteen years.

SEC. 53. Every person who shall maliciously, forcibly, or fraudulently lead, take, or carry away, or decoy, or entice away, any child under the age of ten years, with intent to detain and conceal such child from the parent, guardian, or other person having the lawful charge of such child, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

SEC. 54. If any father or mother of any child, under the age of ten years, or any other person to whom such child shall have been confided, shall expose such child in a street, field, or other place, with intent to abandon it, he or she shall, upon conviction, be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than five years.

SEC. 55. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another, and every person convicted thereof shall be fined in a sum not less than five nor more than fifty dollars.

SEC. 56. An assault with intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 57. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the Territorial prison not less than one nor more than two years, or to a fine not less than five hundred nor more than one thousand dollars, or to both such fine and imprisonment, at the discretion of the court.

SEC. 58. Assault and battery is the unlawful beating of another, and a person convicted thereof shall be fined in a sum not less than ten nor more than one hundred dollars, and imprisonment in the county jail not less than one nor more than six months, or both such fine and imprisonment, at the discretion of the court.

SEC. 59. If any person shall assault and beat another with a cowhide, stick, or whip, having at the time in his possession a pistol or other deadly weapon, with an attempt to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the Territorial prison not less than one nor more than ten years.

SEC. 60. Every person who shall willfully and maliciously, or negligently poison any spring, well, or reservoir of water, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one nor more than ten years.

SEC. 61. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or to compel the person so threatened to do any act against his or her will, he shall be punished, upon conviction thereof, by imprisonment not more than one year nor less than six months, or by fine not exceeding five hundred dollars, nor less than one hundred dollars, or by both such fine and imprisonment.

SEC. 62. Every person in this Territory having, carrying, or procuring from another person any dirk, dirk-knife, sword, sword-cane, pistol, gun, or other deadly weapon, who shall, in the presence of one or more persons, draw or exhibit any of said deadly weapons in a rude, angry, or threatening manner, not in necessary self-defence, or who shall in any manner unlawfully use the same in any fight or quarrel, the person or persons so offending, upon conviction thereof, in any criminal court in any county in this Territory, shall be fined in any sum not less than fifty dollars, nor more than one hundred dollars, or imprisoned in the county jail not less than three nor more than six months, at the discretion of the court, or both such fine and imprisonment, together with the costs of prosecution, which said costs shall in all cases be computed and collected in the same manner as costs in civil cases, and all fines and forfeitures arising under the provisions of this act shall be paid into the county treasury for school purposes. *Provided, nevertheless,* That no sheriff, deputy sheriff, constable, marshal, or other peace officer shall be held to answer under the provisions of this act, for drawing or exhibiting any of the weapons hereinbefore mentioned, while in the lawful discharge of his or their duties. It shall be the duty of all military, civil, and peace officers in this Territory to be vigilant in carrying the provisions of this act into full force and effect, as well also of all grand jurors to inquire into and make presentment of each and every offence under this act which shall come under or within their knowledge. It shall be, and is hereby made, the duty of all judges in this Territory to give this act in charge to the grand juries at each term of their respective courts, and also to all trial juries impannelled for the trial of any of the offences hereinbefore mentioned in this act.

SEC. 63. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the Territorial prison for a term not exceeding one year.

CHAPTER V.

OFFENCES AGAINST HABITATIONS, OTHER BUILDINGS AND OTHER PROPERTY.

Sec. 64. *Arson in first degree; what is.*
Sec. 65. *Arson in second degree; what is.*
Sec. 66. *Arson in third degree; what is.*
Sec. 67. *Maliciously burning standing crop, bridge, etc.; penalty therefor.*
Sec. 68. *Willfully burning insured property.*
Sec. 69. *Burglary in night time.*
Sec. 70. *Burglary in day time.*

SEC. 64. Every person who shall willfully and maliciously burn, or cause to be burned, in the night time, any building, boat, or vessel which is inhabited by some human being, and of which he shall have knowledge, or shall have reasonable cause for believing to be so inhabited, shall be guilty of arson in the first degree, and, upon conviction thereof, shall be punished by imprisonment for life in the Territorial prison, or with death, as the jury may designate.

SEC. 65. Any person who shall willfully and maliciously burn, or cause to be burned, in the day time, any building, boat, or vessel, inhabited by any person, he knowing, or having reasonable cause for believing, such building, boat, or vessel to be so inhabited, or shall burn, or cause to be burned, any building or structure attached to the same, with intent to burn such inhabited building, boat, or vessel, shall be deemed guilty of arson in the second degree; and shall be punished by imprisonment in the Territorial prison for a period of time not less than five years, nor more than twenty years.

SEC. 66. Every person who shall willfully and maliciously burn, or cause to be burned, any uninhabited building, boat, or vessel, owned by another, at any time, shall be deemed guilty of arson in the third degree; and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than three years, nor more than fifteen years.

SEC. 67. Every person who shall willfully and maliciously burn, or cause to be burned, any standing crop or stack of grain or hay, or any bridge across any stream in this Territory, or any dam or flume, or any pile or parcel of wood or lumber, the property of another, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than two years, nor more than five years.

SEC. 68. Every person who shall willfully burn, or cause to be burned, any building, boat, vessel, goods, wares, merchandise, or any other chattels, which are at the time insured against loss or damage by fire, with intent to injure or defraud the insurer thereof, whether the same be the property of such insured person, or of any other person, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term of not less than two years, nor more than ten years.

SEC. 69. Every person who shall, in the night-time, forcibly break and enter, or without force (the doors and windows being open), enter into any dwelling house, or any other house whatever, or tent, with intent to commit murder, rape, robbery, mayhem, larceny, or other felony, shall be deemed guilty of burglary, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than five nor more than twenty years.

SEC. 70. Every person who shall break and enter into any dwelling or other house, with the intent to commit murder, rape, or robbery, or any other felony, in the day time, shall be deemed guilty of burglary, and upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than two years, nor more than ten years.

CHAPTER VI.

OFFENCES AGAINST PROPERTY.

Sec. 71. *Robbery; definition of.*
Sec. 72. *Grand larceny; what is.*
Sec. 73. *Petit larceny; what is.*
Sec. 74. *Feloniously stealing a dog deemed petit larceny.*
Sec. 75. *Negotiable instruments, deeds, etc., subjects to larceny.*
Sec. 76. *Of person knowingly buying or receiving property obtained by larceny, burglary, etc.*

Sec. 77. Of person bringing to Territory property obtained by larceny, burglary, etc. Proceeding.
Sec. 78. Of person marking or branding, or altering marks or brands, with intention to steal.
Sec. 79. Of embezzlement or theft by public officer or servant of Territory.
Sec. 80. Of officer collecting or receiving public moneys and failing to pay over same, when lawful demand made therefor.
Sec. 81. Of officer of Territory converting to his own use, investing, or loaning public moneys, bonds, etc., or person privy thereto.
Sec. 82. Of person defacing or destroying evidence of title, or value, with intent to injure.
Sec. 83. Of persons fraudulently destroying or removing corner or boundary lines.
Sec. 84. Larceny by clerk or servant.
Sec. 85. Larceny by bailee.
Sec. 86. Larceny by lodger.
Sec. 87. Of person knowingly driving away stock deemed misdemeanor. Fines therefor; how appropriated.

SEC. 71. Robbery is the felonious and violent taking of money, goods, or other valuable things from the person of another by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the Territorial prison for a term not less than five years, and which may be extended to life.

SEC. 72. Every person who shall feloniously steal, take and carry away, lead, or drive away the personal goods or property of another, of the value of fifty dollars or more, shall be guilty of grand larceny, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years. If any person or persons shall steal, or, with intent to steal, shall take, carry, drive, lead, or entice away any mare, gelding, stallion, colt, foal or filley, mule or ass, ox, cow, bull, stag, heifer, steer or calf, being the property of another, of whatever value, he or they shall be deemed guilty of grand larceny, and being thereof convicted, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and be imprisoned not less than one year nor more than fourteen years, in the Territorial prison, and shall be liable to the person, or persons, whose property is so stolen, for the said property, or the value thereof, and any expenses by him; or them, incurred in endeavoring to make reclamation thereof.

NOTE.—Latter part of preceding section, relating to larceny of animals, is from Act of February 19th, 1879.

SEC. 73. Every person who shall feloniously steal, take, and carry away, lead or drive away the personal goods or property of another, under the value of fifty dollars, shall be deemed guilty of petit larceny, and upon conviction thereof shall be punished by imprisonment in the county jail, not more than three months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment. And the court passing sentence upon any person or persons convicted under this section, may order that such person or persons may be kept on bread and water during all or any portion of his or their imprisonment.

NOTE.—Act February 11th, 1876.

SEC. 74. That every person who shall feloniously steal, take, and carry, lead or drive away any dog, either of the male or female kind, belonging to another, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punished by imprisonment in the county jail not more than three months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. In any judgment rendered for a fine only, the judgment shall provide that unless the same be paid the defendant shall be imprisoned in the county jail, at the rate of one day for every two dollars of the fine.

SEC. 75. Bonds, promissory notes, bank notes, bills of exchange, or other bills, orders, drafts, checks, receipts, or certificates, or warrants for or concerning money, goods, or property, due or to become due, or to be delivered, or any public security issued by the United States or by this Territory, and any deed or writing containing a conveyance of land or valuable contract in force, or any release or defeasance, or any other instrument whatever, shall be considered personal goods of which larceny may be committed, and the money due thereon, or secured thereby, and remaining unsatisfied, or which, in any event or contingency, might be collected thereon, or the value of the property transferred or effected thereby, as the case may be, shall be deemed the value of the property stolen.

SEC. 76. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or any kind of property, the stealing of which is declared to be larceny, of the value of fifty dollars or more, or property obtained by robbery, burglary, or embezzlement, of such value, knowing the same to have been so obtained, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than five years, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. If the value of the goods thus bought or received be of the value of less than fifty dollars, the offender, upon conviction, shall be punished by imprisonment in the county jail not exceeding three months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment; and every such person may be tried, convicted, and punished before or after the trial of the principal.

Any person or persons, who shall buy any mare, gelding, stallion, colt, foal or filley, mule or ass, ox, cow, bull, stag, heifer, steer or calf, that shall have been stolen, knowing the same to have been stolen, or any person or persons, who shall conceal or receive, any mare, gelding, stallion, colt, foal or filley, mule or ass, ox, cow, bull, stag, heifer, steer or calf, knowing the same to have been stolen, with intent thereby to defraud the owner; or if any person shall conceal any horse or cattle-thief, knowing him to be such, with intent to prevent his detection or arrest, every person so offending shall be deemed guilty of concealing a felony, and being thereof convicted, shall be punished by a fine of not less than fifty nor more than three hundred dollars, and be imprisoned not less than one year nor more than five years in the Territorial prison.

NOTE.—The latter part of preceding section, referring to buying or concealing stolen animals or concealing cattle-thief, is taken from Act of February 19th, 1879.

SEC. 77. Every person bringing any goods or property into this Territory, taken by himself, or which he knew was taken by another, in another Territory or State, by robbery, burglary, embezzlement, or larceny, shall, upon reasonable cause being shown to a magistrate to induce him to believe that the accused has brought such goods or property into this Territory, taken in either of the ways aforesaid in another Territory or State, be committed to the county jail, to await a requisition from the governor of the Territory or State whence such goods or property were brought, as aforesaid, into this Territory: *Provided,* That such person shall not be detained in such custody longer than a period of eight weeks.

SEC. 78. Every person who shall mark, brand, alter, or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goats, hogs, shoats, or pigs, not his or her own property, but belonging to some other person, or cause the same to be done, with the intent thereby to steal the same, or to prevent identification thereof by the owner, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than six months, nor more than five years.

SEC. 79. Every servant, officer, or person employed in any public department, station, or office of the government of this Territory, or any county of this Territory, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take or carry away any money, goods, chattels, effects, books, or book of record or of account, bond or bonds, promissory note or notes, bank bill or notes, or any other writing or security for the payment of money, or property, of whatever description it may be, being the property of said Territory, county, or corporate body, shall, on conviction thereof, be punished by imprisonment in the Territorial prison for a period of time not less than one year, nor more than ten years.

SEC. 80. If any officer who now is or hereafter may be entrusted by law to collect, disburse, or receive or safely keep any money or moneys, revenue or revenues, belonging to this Territory, to the school fund of this Territory, to the school fund of any county or township of any county in this Territory, to any canal, turnpike, or railroad fund of this Territory, or any county thereof, or to any fund for the improvement of any public road or roads, river, creek, or other water course, bordering on or within this Territory, or to any other fund now being or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes, and orders which any such officers or persons shall receive for disbursement, and has not disbursed, or shall collect, or shall receive for safe keeping, belonging to this Territory, to any county of this Territory, or to any such fund as aforesaid, when such officer or person shall thereto be required by law, and demand duly made by the successor or successors of such officer, or person in office, or by the officer or person to whom such money, warrants, bills, notes, or orders ought by law to be paid over, or his or their attorney or agent duly authorized in writing, signed and acknowledged (if such demand be practicable), every such officer or person shall, on conviction therefor, be punished, by imprisonment in a Territorial prison for a term not less than two years, nor more than five years: *Provided,* That no person shall be imprisoned in the Territorial prison under this section, unless the money not paid over shall amount to more than one hundred dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section shall forever thereafter be disqualified from holding any office of honor, trust, or profit in this Territory.

Sec. 81. That if any officer of the Territory, or of any county, city, or town in this Territory, charged with the safe keeping, transfer, or disbursement of public moneys, shall convert to his own use, in any way whatever, or shall use by way of investment in any kind of property or merchandise, or shall loan, with or without interest, any portion of the public moneys, bonds, or other evidences of indebtedness of the Territory, entrusted to him for safe keeping, transfer, or disbursement, or any other purpose, every such act shall be deemed and adjudged to be embezzlement of so much of such moneys as shall be thus taken, converted, invested, used, or loaned, which is hereby declared to be felony; and the neglect or refusal to pay over on demand any public moneys in his hands, upon the presentation of a draft or order, or warrant, drawn upon him by the proper officer, or any officer authorized by law, and signed by such officer, or to transfer or disburse any such moneys promptly, according to law, on the legal requirement of any officer authorized to make such requirement, shall be *prima facie* evidence of such conversion to his own use of the public moneys that may be in his hands. All persons advising, or knowingly or willfully participating in such embezzlement, shall, upon conviction, receive the same punishment as the principal offender, and may be tried, convicted, and punished before the original or principal offender shall have been apprehended. All persons offending against the provisions of this section shall, upon conviction, be punished by imprisonment in the Territorial prison for a term not less than two nor more than ten years, and adjudged, at the discretion of the court, to pay a fine equal to the amount embezzled.

Sec. 82. Every person who shall fraudulently or maliciously tear, burn, deface, cut, or in any way destroy any debt, lease, bond, will, or any other writing sealed, or any bank bill or note, check, warrant, or certificate for the payment of money or other thing, or the delivery of goods, or any certificate or other public security of this Territory, or of the United States, or any State or Territory, for the payment of money, or any receipt, acquittance, release or defeasance, discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney, or other power, or any day-book, or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than five years.

Sec. 83. Every person who shall willfully or maliciously remove any monument of stone, wood, or other durable material, erected for designating the corner, or other point, or any post or stake fixed or driven into the ground for the purpose of designating a point in a boundary of any lot or tract of land, or alter the marks on any tree, post, or other monument, made for the purpose of designating any point, course, or line in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by a fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the county jail for a term not less than one month, nor more than one year.

Sec. 84. If any clerk, apprentice, or servant, or any other person, whether bound or hired, to whom any money or goods or chattels or other property shall be entrusted by his master or employer, shall withdraw himself from his master or employer, and go away with the money, goods, chattels, or other property, or any part thereof, with intent to steal the same and defraud his master or employer thereof, contrary to the trust and confidence in him reposed by his said master or employer, or being in the service of his said master or employer shall embezzle the said money, goods or chattels or property, or any part thereof, or otherwise shall convert the same to his own use, with like purpose to steal the same, every person so offending shall be punished in the manner prescrided by law for feloniously stealing property of the value of the articles so taken, embezzled, or converted.

Sec. 85. If any bailee of any money, goods, or property shall convert the same to his own use, with intent to steal the same, he shall be guilty of grand or petit larceny, according to the amount of the money or value of the goods, chattels, or property so converted, in the same manner as if the original taking had been felonious, and, on conviction thereof, shall be punished accordingly.

Sec. 86. If any lodger shall take away, with intent to steal, embezzle or purloin, any bedding, furniture, goods, or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny, according to the value of the property so taken, and, on conviction, shall be punished accordingly.

Sec. 87. Every drover, or other person or persons, who shall drive off, or who shall knowingly or willingly suffer or permit to be driven off, from the premises of any resident of this Territory, or from the range on which the stock of any such resident usually use and run, any horses, mules, neat cattle, hogs, sheep, or any other stock belonging to any such resident, with his herd or drove, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail not to exceed one month, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment. All moneys collected under the provisions of this section shall be paid into the school fund of the county in which the offence is committed.

CHAPTER VII.

FORGERY AND COUNTERFEITING.

Sec. 88. *Forgery; what is.*
Sec. 89. *Counterfeiting; what deemed.*
Sec. 90. *Of any person having in his possession counterfeit money, with intention to pass same.*
Sec. 91. *Of person counterfeiting private stamps.*

Sec. 92. *Of person knowingly selling goods with forged or counterfeit stamps thereon.*
Sec. 93. *Of person having in possession or receiving forged promissory note, etc., with intent to pass same.*
Sec. 94. *As to person having in possession or making check, etc., on corporation not in existence, with intent to pass same.*
Sec. 95. *Of person with evil intent making or having in possession dies or plates used in counterfeiting.*
Sec. 96. *Of proof of corporation on trial for forgery.*
Sec. 97. *Experts competent witnesses.*
Sec. 98. *As to counterfeiting seal of Territory or of any court.*
Sec. 99. *As to counterfeiting gold dust, bullion, etc.*
Sec. 100. *Person having in possession counterfeit gold dust, bullion, etc., knowing same to be counterfeit, with intent to pass same.*

Sec. 88. Every person who shall falsely make, alter, forge, or counterfeit any record or other authentic matter of a public nature or character, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or receipt for money or goods, or any acquittance, release, or discharge of any debt, account, suit, action, demand, or other thing, real or personal, or any transfer of assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or shall counterfeit or forge the seal or hand-writing of another, with an intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this Territory or not; or shall utter, publish, pass or attempt to pass, as true and genuine, any of the above named false, altered, forged or counterfeit matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this Territory or not, every person so offending shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 89. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this territory, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 90. Every person who shall have in his possession, or receive from any other person, any counterfeit gold or silver coin or coins of the species now current or hereafter to be current in this Territory, with intention to utter or pass the same, or permit, cause, or procure the same to be uttered, or passed, with intent to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 91. That every person who shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares, or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares, or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than three hundred nor more than six hundred dollars.

SEC. 92. That any person who shall sell any goods, wares, or merchandise, having thereon any forged or counterfeited stamps or labels, purporting to be stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than three hundred nor more than six hundred dollars.

SEC. 93. Every person who shall have in his possession, or shall receive from any other person, any forged promissory note or notes, or bank bill or bills, for the payment of money or property, with intention to pass the same, or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this Territory or not, knowing the same to be forged or counterfeited, or shall have and keep in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit or cause, or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause or procure the same to be uttered and passed, to defraud any person or persons, body politic or corporate, whether in this Territory or elsewhere, shall, on conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 94. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this Territory, or elsewhere, or with the like intention shall attempt to pass, utter, or publish, or shall have in his possession, with the intention to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank corporation, co-partnership, or individual, when in fact there shall be no such bank, co-partnership, or individual in existence, the said person knowing the said note, bill, check, or instrument in writing for the payment of money or property to be fictitious, shall be deemed guilty of forgery, and, on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than fourteen years.

SEC. 95. Every person who shall, with evil intent, make, or knowingly have in his possession, any die or dies, plate or plates, or other thing whatever, made use of in counterfeiting the coin now made current, or hereafter to be made current in this Territory, or in counterfeiting bank notes or bills, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years. And all such dies, plates, apparatus, paper, metal, or machine, intended for the purposes aforesaid, shall be destroyed under the order of the court.

SEC. 96. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

SEC. 97. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

SEC. 98. Every person who shall fraudulently forge or counterfeit the seal of this Territory, or the seal of any court or public officer by law entitled to have and use a seal, or seal of any corporation, and shall make use of the same, or shall forge or counterfeit the signature of any public officer or seal of any corporation, or shall unlawfully and corruptly, and with evil intent, affix any of the true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall willfully conceal the same, knowing it to be falsely made and counterfeit, and shall thereof be convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 99. If any person shall counterfeit any kind of species of gold dust, or silver or gold bullion or bars, lumps, pieces or nuggets of gold or silver of any description whatever, of uncoined gold or silver, currently passing in this Territory, or shall utter or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver, as aforesaid, knowing the purpose for which said instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold or silver, as aforesaid, every such person so offending shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term of not less than one year, nor more than fourteen years.

SEC. 100. Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, silver or gold bullion or bars, lumps, pieces, or nuggets of gold or silver, of any description whatever, of uncoined gold or silver currently passing in this Territory, or entering in anywise into the circulating medium of this Territory, with the intention to pass, utter, or put off the same, or permit, cause, or procure to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

CHAPTER VIII.

CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

Sec. 101. *Perjury; what deemed.*
Sec. 102. *Person procuring conviction and execution of innocent party by perjury, guilty of murder.*
Sec. 103. *Bribery; what is deemed.*
Sec. 104. *As to bribery; penalty.*
Sec. 105. *Of attempt to commit the act of bribery.*
Sec. 106. *Of officer stealing, falsifying, or avoiding records, etc.*
Sec. 107. *Of sheriff or jailer guilty of inhumanity to prisoner.*
Sec. 108. *Officer retiring from office, withholding, mutilating, or destroying records, papers, etc.*
Sec. 109. *Falsely personating another.*
Sec. 110. *Falsely personating another and receiving money, property, etc.*
Sec. 111. *Resisting or obstructing an officer.*
Sec. 112. *Rescuing criminal subject to death penalty or imprisonment in penitentiary.*
Sec. 113. *Rescuing person charged with capital offence, penitentiary offence, or misdemeanor.*
Sec. 114. *Officer releasing prisoner unlawfully.*
Sec. 115. *Furnishing convict with tools to aid escape.*
Sec. 116. *Rescuing one in lawful custody.*
Sec. 117. *Aiding prisoner to escape.*
Sec. 118. *Officer voluntarily allowing prisoner to escape. Negligence in allowing escape.*
Sec. 119. *Officer refusing to receive or arrest criminal.*
Sec. 120. *Compounding a misdemeanor.*
Sec. 121. *Attempt to bribe juror.*
Sec. 122. *Juror accepting bribe.*
Sec. 123. *Of conspiracy.*
Sec. 124. *Falsely exercising duties of an officer.*
Sec. 125. *Officer exacting or receiving more than legal fees.*
Sec. 126. *Justice or constable purchasing judgment.*
Sec. 127. *As to selling an office.*
Sec. 128. *Threats against character, person, or property, to exact money.*
Sec. 129. *Opening sealed letter without authority.*
Sec. 130. *Officer neglecting duties, in issuing venire or summoning jurors.*

SEC. 101. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm, willfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury, or subornation of perjury, as the case may be, and, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 102. Every person who, by willful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed guilty of murder in the first degree.

SEC. 103. If any person or persons shall, directly or indirectly, give any sum of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any judge or justice of the peace, acting within this Territory, or to corrupt, induce, or influence such judge or justice of the peace to be more favorable to one side than the other, in any suit, matter, or cause pending or to be brought before him or them; or shall directly or indirectly give any sum of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or any other thing, to obtain, procure, or influence any member of the legislative assembly, or to incline, induce, or influence any such member of the legislative assembly to be more favorable to one side than the other on any question, election, matter, or thing pending or to be brought before the legislature, or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation, or security, with intent, and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly who shall accept or receive the same shall be deemed guilty of bribery, and, on conviction, shall be punished by imprisonment in the Territorial prison for a term not less than one year, and shall be disqualified from holding any office of honor, trust, or profit in this Territory.

SEC. 104. If any person shall, directly or indirectly, give any sum of money, or any other bribe, present, or reward, or any promise, contract, or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney-general, district or county attorney, member of the legislative assembly, or other officer, ministerial or judicial, or assessor (but such fees as are allowed by law), the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation, or security, shall be deemed guilty of bribery, and, on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than ten years, and shall be disqualified from holding any office of honor, trust, or profit in this Territory.

SEC. 105. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney-general, district or county attorney, or other ministerial or judicial officer, or assessor, in any of the cases mentioned in the preceding sections; and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney-general, district or county attorney, or other ministerial or judicial officer, or assessor, who shall propose or agree to receive a bribe, in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be imprisoned in the Territorial prison for a term not less than five years, nor more than ten years, and shall be disqualified from holding any office of honor, trust, or profit in this Territory.

SEC. 106. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer or assessor, or any person whosoever, shall steal, embezzle, corrupt, alter, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall, knowingly and willfully, take off, discharge, conceal, or issue any forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registered acknowledgment or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever, of or belonging to any public officer in this Territory, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than ten years, and be fined in any sum not exceeding five thousand dollars.

SEC. 107. Every sheriff or jailer, or person who shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and shall be removed from office, and, upon conviction thereof, the court before whom the cause may be tried shall enter a judgment removing him from any office he may hold.

SEC. 108. If any officer whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned, or been legally removed from office, shall willfully and unlawfully withhold or detain from his successor, or other person entitled thereunto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate, or destroy, or take away the same, the person so offending shall, on conviction, be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than ten years. The provisions of this section shall apply to any person who shall have such records, documents, papers, or other writings in his, her or their possession, and shall willfully mutilate, destroy, withhold, or detain the same, as aforesaid.

SEC. 109. Every person who shall falsely represent, or personate another, and in such assumed characted shall marry another, become bail or security for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of any conveyance of real estate, or any other instrument which by law may be recorded, or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs, or sums of money, or his right or interest may in any manner be affected, shall, upon conviction, be punished by imprisonment in the Territorial prison for a term not less than one year, nor exceeding two years, or by fine not exceeding five thousand dollars.

SEC. 110. Every person who shall falsely represent or personate another, and in such assumed character, shall receive any money or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner, and to the same extent, as for feloniously stealing the money or property so received.

SEC. 111. If any person shall, knowingly and willfully, obstruct, resist, or oppose any sheriff, deputy sheriff, coroner, constable, marshal, policeman, or other officer of this Territory, or other person duly authorized, serving or attempting to serve any lawful process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat any such officer or person, duly authorized, in serving or executing, or attempting to serve or execute any order or process as aforesaid, or for having served or executed, or attempting to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the Territorial prison for a term not less than one year, nor more than five years. *Provided,* Any officer or person that may assault or beat any individual, under color of his commission or outhority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

SEC. 112. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years; and if any person or persons set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is imprisonment in the Territorial prison, or in prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

SEC. 113. If any person shall set at liberty or rescue any person, who, before conviction, stands charged, or committed for any capital offence, or any crime punishable in the Territorial prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the Territorial prison not less than one year, nor exceeding ten years; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

SEC. 114. If any sheriff, deputy sheriff, or jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, every such person, on conviction, shall be punished by imprisonment in the Territorial prison not less than one year, nor more than ten years, and fined in a sum not exceeding ten thousand dollars.

SEC. 115. If any person shall carry to any convict imprisoned or in custody, or into any county jail or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisonment in the Territorial prison not less than one year, nor more than five years.

Sec. 116. If any person or persons shall rescue another in lawful custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

Sec. 117. If any person shall aid or assist a prisoner lawfully imprisoned or detained in custody for any offence against this Territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey or cause to be delivered to such prisoner any disguise, instrument, or arms proper to facilitate the escape of such prisoner, any person so offending, although no escape or attempt to escape be actually made, shall, on conviction, be punished by fine not exceeding five thousand dollars, and imprisoned in the Territorial prison not less than one year, nor more than five years.

Sec. 118. If any sheriff, coroner, jailer, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall be find in any sum not exceeding five thousand dollars, and imprisoned in the Territorial prison not less than one year, nor exceeding five years: *Provided*, That if such person be in custody charged with murder or other capital offence, then such officer or person suffering or permitting such escape shall be punished by imprisonment in the Territorial prison for any term not less than one year, nor more than ten years. A negligent escape of a criminal charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than five years, or shall be fined in a sum not less than one thousand nor more than five thousand dollars.

Sec. 119. If any sheriff, coroner, keeper of a jail, constable, or other officer shall willfully refuse to receive, or arrest any person charged with a criminal offence, such sheriff, coroner, jailer, constable, or other officer so offending, shall, on conviction, be fined in any sum not less than one thousand nor more than five thousand dollars, and imprisoned in the Territorial prison not exceeding five years.

Sec. 120. Every person having a knowledge of the actual commission of any offence punishable by imprisonment in a county jail, or by fine, or of any misdemeanor or violation of any statute, for which any pecuniary or other penalty is or shall be prescribed, who shall take any money, property, gratuity, or reward, or any engagement or promise therefor, upon any agreement or understanding, expressed or implied, to compound or conceal any such offence or misdemeanor, or to abstain from any prosecution thereof, or to withhold any evidence thereof, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months: *Provided*, That this section shall not apply to those offences which may be lawfully compromised by leave of the court.

SEC. 121. Every person who shall, directly or indirectly, promise or offer to any juror, or procure any juror to take money or other bribe, present, or reward, or shall make or offer to make any contract, obligation, or give any security for the payment or delivery of money, present, reward, or other thing, to any juror, in order to influence him to favor one side of a cause in which he may be impannelled; or shall, by means of threats or menaces, or corruptly, or in any other manner influence or attempt to influence any juror to favor one side of any cause, shall be deemed guilty of embracery; and, upon conviction thereof, shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the Territorial prison not less than one year, nor more than five years; or by both such fine and imprisonment.

SEC. 122. Any juror who shall take any money, reward, present, or any other thing to induce him to favor any side of a cause, or shall be influenced corruptly in rendering his verdict in any cause by any means whatever, shall be fined in any sum not exceeding five thousand dollars, and shall be imprisoned in the Territorial prison not less than one year, nor more than five years; and this section shall apply as well to grand as to trial jurors.

SEC. 123. If two or more persons shall conspire, either to commit any offence, or falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence, or falsely to move or maintain any suit, or to cheat or defraud any person of any property, by any means which, if executed, would amount to a cheat, or to obtain money or property by false pretence, or to cheat or defraud any person of any property by any means which are in themselves criminal, or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for perversion or obstruction of justice or due administration of the laws, they shall, on conviction, be punished by imprisonment in the county jail not more than six months, or by a fine of not more than one thousand dollars: *Provided*, That it shall not be necessary, to procure conviction under this section, to prove any overt act done in pursuance of such conspiracy.

SEC. 124. If any person shall willfully take upon himself to exercise or officiate in any office or place of another, in this Territory, without being lawfully authorized thereto, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 125. If any judge, justice of the peace, sheriff, coroner, constable, clerk, or other officer or assessor of this Territory, ministerial or judicial, shall willfully receive or take any fee or reward to do or execute his duty as such officer, except such as is or shall be allowed by law; or if any such officer shall willfully or corruptly ask or demand, as a condition precedent to the performance of his duties as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and, on conviction, shall be fined in any sum not less than two hundred dollars, and not more than one thousand dollars, and, on conviction, removed from office.

SEC. 126. If any justice of the peace, constable of the same township, shall, directly or indirectly, purchase any judgment, or part thereof, on the docket of such justice, or any docket in his possession, he shall, upon conviction thereof, be fined in each offence in any sum not less than one hundred dollars, nor more than one thousand dollars.

SEC. 127. Every person holding or receiving any office under the laws of this Territory, who shall, for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding five thousand dollars, and shall forfeit his office, and be disabled from holding such office; and every person who shall give, or make any agreement to give, any reward or gratuity in consideration of any such grant or deputation, shall, upon conviction, be fined in any sum not less then five hundred nor exceeding five thousand dollars.

SEC. 128. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his house or other property, or to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities, though no money, goods, chattels, or valuable thing be demanded, such person so offending shall, on conviction, be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

SEC. 129. Every person who shall willfully open or read, or cause to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed, and every person who shall maliciously publish the whole or any part of such letter, without the authority of the writer thereof, or of the person to whom the same was addressed, knowing the same to have been opened, shall, upon conviction, be punished by a fine not exceeding one thousand dollars, nor less than fifty dollars.

SEC. 130. If any officer of this Territory, or county thereof; shall willfully or negligently fail to perform his duties as required by law, in drawing or issuing venires, or in summoning jurors, both grand and trial, as required by law, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five hundred dollars.

CHAPTER IX.

OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILLITY.

Sec. 131. *Disturbing peace of neighborhood or family.*
Sec. 132. *Unlawful assembly; disturbing the peace.*
Sec. 133. *An affray; what deemed.*
Sec. 134. *Unlawful assembly; what deemed.*
Sec. 135. *Riot; what deemed.*
Sec. 136. *Disturbing religious congregation.*
Sec. 137. *Vending intoxicating liquors within one mile of a camp meeting, held for religious worship.*
Sec. 138. *Officer having knowledge of persons intending to fight with deadly weapons to prevent same.*
Sec. 139. *Libel; what is; punishment therefor.*

SEC. 131. If any person shall willfully and maliciously disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to fight, or fighting, every person convicted thereof shall be fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding two months.

SEC. 132. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge or justice of the peace, sheriff, coroner, constable, or other public officer, the persons so offending shall, upon conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

SEC. 133. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this Territory, the persons so offending shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding two hundred dollars, and imprisoned in the county jail not more than one month.

SEC. 134. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing toward it, such persons shall be deemed guilty of an unlawful assembly, and, upon conviction thereof, shall be fined severally in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months.

SEC. 135. If two or more persons meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a riot, and, on conviction, shall be severally fined in a sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months; and if two or more persons shall actually do an unlawful act of violence, either with or without a common cause of quarrel, or even do an unlawful act in a violent, tumultuous, and illegal manner, they shall be deemed guilty of a riot, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars each, or be imprisoned in the county jail for any term not exceeding six months, or both such fine and imprisonment.

SEC. 136. Every person who shall willfully disquiet or disturb any congregation or assembly of people, met for religious worship, by making a noise, or by rude or indiscreet behavior, or profane discourse within their place of worship, or so near the same as to disturb the order or solemnity of the meeting, or menace, threaten, or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by a fine not less than five hundred dollars, or by imprisonment in the county jail not exceeding three months.

SEC. 137. Every person who shall erect or keep a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous or fermented liquors, or any drinks, of which wine, spirituous or fermented liquors form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars.

SEC. 138. If any judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, shall have knowledge of an intention on the part of two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the deed, every such officer shall be fined in a sum not exceeding one thousand dollars.

Sec. 139. A libel is a malicious defamation expressed either by printing, or by signs or pictures, or the like, intended to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt, or ridicule. Every person, whether the writer or publisher, convicted of the offence, shall be fined in a sum not exceeding five thousand dollars, or imprisoned in the county jail not exceeding six months. In all prosecutions for libel the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

CHAPTER X.

OFFENCES AGAINST PUBLIC MORALITY, HEALTH AND PEACE.

Sec. 140. *Bigamy defined.*
Sec. 141. *Punishment therefor.*
Sec. 142. *Sunday or Lord's day; observance of.*
Sec. 143. *Refusing to aid officer when lawfully commanded.*
Sec. 144. *Officer having notice of unlawful assembly, refusing to act.*
Sec. 145. *Selling or giving intoxicating liquor to Indian.*
Sec. 146. *Incestuous marriages, fornication, and adultery.*
Sec. 147. *Obstructing or injuring public highway, street, bridge, ditch, river, etc.*
Sec. 148. *Defacing or destroying notice, advertisement, record, etc.*
Sec. 149. *Having in possession pick-lock or other instrument with intent to break into buildings, etc., or deadly weapon with intent to assault, etc.*
Sec. 150. *Male person above age of eighteen years refusing to join posse comitatus.*
Sec. 151. *Selling unwholesome provisions.*
Sec. 152. *Adulterating food or liquor for sale.*
Sec. 153. *Adulterating drugs or medicines for sale.*
Sec. 154. *Physician while intoxicated prescribing poisonous drugs or medicines.*
Sec. 155. *Apothecary selling poison without marking same as "Poison."*
Sec. 156. *Selling spirituous liquors to soldiers.*
Sec. 157. *Soldier obtaining spirituous liquors by putting off uniform.*
Sec. 158. *Defence against violation of section one hundred and fifty-six.*

Sec. 140. Bigamy consists in having two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this Territory, being married, or who shall hereafter marry, do, at any time, marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and be imprisoned in the Territorial prison not less than one year, nor more than five years. It shall not be necessary to prove either of the said marriages by the register and certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this Territory, cohabitation in this Territory, after such second marriage, shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is, or shall be, at the time of the second marriage, divorced by lawful authority from the bond of such former marriage, or to any person, when the former marriage has been by lawful authority rendered void.

Sec. 141. If any man or woman, being unmarried, shall knowingly marry the wife or husband of another, such man or woman shall, upon conviction, be fined not less than one thousand dollars, or imprisoned in the Territorial prison not less than one year, nor more than two years.

Sec. 142. It shall be unlawful for any person to keep open any play-house, theatre, dance-house, hurdy-gurdy house, prize-ring, race-track, or to keep open any banking game at cards, on the first day of the week, commonly called Sunday or the Lord's day. Any person who shall violate the provisions of this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one dollar, nor more than one hundred dollars, or by imprisonment in the county jail not less than one nor more than thirty days, or by both such fine and imprisonment.

Sec. 143. Every person who shall fail, refuse, or neglect, without a lawful cause, when commanded by any sheriff or other public officer to assist him in the execution of any process (or) in dispersing any unlawful or riotous assembly, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than five days, nor more than ninety days, or by both such fine and imprisonment.

Sec. 144. If any magistrate or officer, having the legal power to suppress any lawful or riotous assembly, have notice thereof, and shall neglect or refuse to proceed to the place of such assembly, or as near thereto as may be safe, and exercise the authority vested in him for suppressing the same, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five dollars, nor more than five hundred dollars, and by imprisonment in the county jail not less than ten days, nor more than ninety days.

Sec. 145. If any person shall, directly or indirectly, sell, barter, or give intoxicating liquor, whether fermented, vinous, or spirituous, or any decoction or composition of which fermented, vinous, or spirituous liquor is a part, to any Indian or half-breed Indian in this Territory, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by fine of not less than one hundred dollars, nor more than five hundred dollars, and shall be imprisoned in the Territorial prison for a term not exceeding three years. It shall be the duty of the judges holding the several district courts in this Territory to give this act in charge to the grand jury at each term of their court.

SEC. 146. *First.* Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the Territorial prison not less than one nor exceeding ten years.

Second. That if any married woman shall hereafter desert her husband, and live and cohabit with another man, in a state of adultery, she shall, on conviction thereof, be imprisoned in the county jail of the county where such offence is committed, not exceeding sixty days. And if any married man shall hereafter desert his wife, and live and cohabit with any other woman in a state of adultery, or if any married man living with his wife, shall keep any other woman and notoriously cohabit with her, in a state of adultery; or if any unmarried man shall live and cohabit with a married woman in a state of adultery; or if any unmarried man shall live and cohabit with an unmarried woman, every person so offending shall, on conviction thereof, be fined in any sum not exceeding three hundred dollars, and be imprisoned in the county jail of the county where such offence is committed, for a period not exceeding six months, and not less than sixty days.

NOTE.—The second clause of preceding section is from the Act of January 28th, 1876.

SEC. 147. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley, of any city, town, or village, or any public bridge, or causeway, mill-race, mill-dam, or ditch, or public river, or stream, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall in any wise pollute or obstruct any watercourse, waterditch, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, city, village, or neighborhood thereabouts; or shall erect or maintain any other thing which would be a nuisance at common law, every person so offending shall, upon conviction, be fined not more than one thousand dollars. And every such nuisance may, by order of the court before whom the conviction may take place, be removed and abated by the sheriff of the county.

NOTE.—Act February 8th, 1877.

SEC. 148. If any person shall intentionally deface or obliterate, tear, or destroy, in whole or in part, any record, copy, or transcript, or extract from or of any law of the United States, or of this Territory, or any proclamation, advertisement or notification, set up at any place in this Territory, by authority of any law of the United States or of this Territory, or by order of any court, such person, on conviction, shall be fined not more than one hundred dollars, nor less than twenty dollars, or be imprisoned in the county jail not more than one month: *Provided,* This section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, notification, advertisement, or order after the time for which the same was by law to remain set up shall have expired.

SEC. 149. If any person shall have found upon him or her any pick-lock, crow-key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any money, goods, and chattels, every person so offending shall, on conviction thereof, be imprisoned in the Territorial prison for a term not less than one year, nor more than five years. And if any person shall have upon him or her any pistol, gun, knife, dirk-knife, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

SEC. 150. Every male person above eighteen years of age who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in arresting or taking any person or persons against whom there may be issued any process, or by neglecting to aid or assist in re-taking any person or persons who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by the sheriff, deputy sheriff, coroner, constable, judge, justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty nor more than one thousand dollars, or shall be imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment.

SEC. 151. If any person shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 152. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, or malt liquor, or other liquor, intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars, and the article so adulterated shall be forfeited and destroyed.

SEC. 153. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or sell any drug or medicine knowing it to be adulterated, or offer the same for sale, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars; and such adulterated drugs and medicines shall be forfeited and destroyed.

SEC. 154. If any physician, or other person, while in a state of intoxication, shall prescribe any poisonous drug or medicine to another person, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 155. Every apothecary, druggist, or other person, who shal sell or deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison, without having the word "Poison," and the true name thereof in English, written or printed upon a label attached to the vial, box, or parcel containing the same, shall be punished by a fine not exceeding two hundred dollars.

SEC. 156. That if any person shall exchange, give, barter or dispose of any spirituous liquors or wine and beer to any troops of the United States, serving within the limits of this Territory, except such supplies as may be ordered by the officers of the United States army, under the direction of the war department, such person, on conviction thereof before the district court of the United States, or before any court of competent jurisdiction of this Territory, hereafter to be formed, shall be imprisoned for a period not to exceed one year, and be fined in the sum of five hundred dollars.

SEC. 157. If any person who has been mustered into the United States service shall put off the uniform and other badges by which he is known and designated from a civilian, and with the intention to deceive, and shall obtain any spirituous liquor or wine and beer from any person, it shall be the duty of the marshal, sheriff, or any police officer of the Territory of Montana, upon complaint being made, to arrest, or cause to be arrested, such person, and keep him in custody until the commanding officer of the company to which he belongs shall apply for his release.

SEC. 158. If any person against whom complaint has been made for the violation of section one hundred and fifty-six of this act, can establish, by a good and competent witness, that spirituous liquor or wine and beer were obtained from him deceitfully, by a soldier, who did not wear, at the time of obtaining such spirituous liquor or wine and beer, a uniform, or other badges used to distinguish him from a civilian, and that he did not know such person to be a soldier, such person, so complained against, shall not be liable to the penalties enumerated in this act.

CHAPTER XI.

OFFENCES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

Sec. 159. *Fraudulent conveyances.*
Sec. 160. *Credit by false pretences.*
Sec. 161. *Goods obtained thereby.*
Sec. 162. *Second sale of land.*
Sec. 163. *False weights and measures.*
Sec. 164. *Debtor fraudulently removing, concealing, or selling property.*
Sec. 165. *Fraudulently disposing of or concealing property during suit, or after judgment.*
Sec. 166. *Keeping or using false scales or weights for weighing gold.*
Sec. 167. *Refusing to account for proceeds of quartz mill, arastra, etc.*
Sec. 168. *Certain games prohibited.*
Sec. 169. *Keeper of house, shop, saloon, etc., violating section one hundred and sixty-eight.*
Sec. 170. *Selling fire-arms and ammunition to hostile Indians.*

SEC. 159. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract, or conveyance had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands, or who, being parties as aforesaid, at any time shall willingly put in use, avow, maintain, justify, or defend the same, or any of them, as true, and done, had or made in good faith, or upon good consideration, or shall alien, assign, or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not less than six months.

SEC. 160. If any person, by false representation of his own wealth, or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels or any valuable thing, or if any person shall cause or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into the possession of goods, wares, or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than six months.

SEC. 161. If any person or persons shall knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and, on conviction, shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than six months, and be sentenced to restore the property so fraudulently obtained, if it can be done.

SEC. 162. Any person or persons after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of lands, or town lot or lots, who shall again knowingly or fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly or fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the Territorial prison not less than one year, nor more than five years.

SEC. 163. If any person shall knowingly sell any goods, wares, or merchandise, or any valuable thing, by false weight or measure, or shall knowingly use false measures at any mill in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and, on conviction, shall be fined not exceeding two hundred dollars, and imprisoned in the county jail not more than six months.

Sec. 164. If any debtor shall fraudulently remove his property or effects out of this Territory, or shall fraudulently sell, convey, assign, or conceal his property or effects, with intent to defraud, hinder or delay his creditors of their just rights, claims or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Sec. 165. Any person against whom an action is pending, or against whom a judgment has been rendered, for the recovery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of said property or effects, with intent to hinder, delay, or defraud the person bringing such action, or recovering such judgment, or shall, with such intent, remove such property or effects beyond the limits of the county in which it may be at the time of commencement of such action, or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

Sec. 166. If any person shall knowingly have, keep, or use any false or fraudulent scales or weights for weighing gold, or gold dust, every person so offending shall be fined in any sum not exceeding one thousand dollars, nor less than one hundred dollars, or imprisonment not more than one year, or both, at the discretion of the court.

Sec. 167. If any owner, manager, or agent, of any species of quartz mill, arastra, furnace or cupel employed in extracting gold from quartz, pyrites, or other minerals, who shall neglect or refuse to account for, or pay over and deliver all the proceeds thereof to the owner of such quartz, pyrites, or other minerals, excepting such portion of said proceeds as he is entitled to in return for his services, he shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisoned not more than one year, or both, at the discretion of the court, for each such offence.

Sec. 168. That if any person shall deal, play at, or make any bet or wager for money, or other things of value, at any of the games called or known as "three card monte," "strap game," "thimblerig game," "patent safe game," "black and red game," (commonly known as the "ten dice game,") any dice game, two card box at "faro," or any similar game or games, or shall induce, or attempt to induce, any person whatever to make any bet or wager at any such game, any such person so offending shall, on conviction, be punished by imprisonment for a term not exceeding five years in the county jail, or by fine not exceeding one thousand dollars, or both such fine and imprisonment, by any court of competent jurisdiction.

Sec. 169. If the keeper of any house, shop, tent, saloon, booth, or other place, shall knowingly permit any of the games mentioned in the preceding section, or any game of similar character, or any other game or games where fraud or cheating is practiced, or where loaded dice, marked cards, or waxed cards are used, within said house, shop, tent, saloon, booth, place, or enclosure, every such person so offending shall, on conviction, be punished by fine not exceeding one thousand dollars, and shall forfeit any license he may have obtained to keep any tavern, saloon, shop, or other place.

Sec. 170. Any person who shall, after the passage of this act, sell, barter, give, or in any manner dispose of, any fire-arms or ammunition of any description whatever, to any hostile Indians within this Territory, shall be deemed guilty of a misdemeanor, and upon due conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for any term not exceeding six months, or both such fine and imprisonment, in the discretion of the court.

CHAPTER XII.

FRAUDULENT AND MALICIOUS MISCHIEF.

Sec. 171.	*Injury to domestic animals by poisoning.*
Sec. 172.	*Injury to domestic animals by maliciously killing or maiming.*
Sec. 173.	*Injury to goods and chattels.*
Sec. 174.	*Injury to buildings, fences, etc.*
Sec. 175.	*Injury to wood, lumber, rafts, etc.*
Sec. 176.	*Injury to bridge, flume, reservoir, acqueduct, etc.*
Sec. 177.	*Injury to jail.*
Sec. 178.	*Carelessly setting out fire.*
Sec. 179.	*Maliciously setting out fire or negligently permitting fire to get out.*
Sec. 180.	*Malicious inoculation of contagious disease.*

SEC. 171. Every person who shall willfully administer any poison to any cattle or domestic animal, or maliciously expose any poisonous substance, with intent that the same shall be taken or swallowed by any cattle or domestic animal, shall, upon conviction, be punished by imprisonment in the Territorial prison not less than one year, nor exceeding three years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 172. Every person who shall maliciously kill, maim, or wound any horse, ox, or other domestic animal, belonging to another, or shall maliciously or cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be punished by fine not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

SEC. 173. Every person who shall willfully, unlawfully, and maliciously destroy, burn, cut, or otherwise injure or destroy any goods, chattels, or other property of any description whatever, the property of another, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

SEC. 174. Every person who shall maliciously, unlawfully and willfully break, destroy, or injure the door or window of any dwelling-house, shop, store, or other house or building, or sever therefrom any gate, fence, or enclosure, or any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or pull down, injure, or destroy any gate-post, railing, or fence, or any part thereof, or cut down, lap, girdle, or otherwise injure or destroy any fruit or ornamental or shade tree, being the property of another, shall, on conviction, be fined not more than two hundred dollars, or imprisonment in the county jail not exceeding six months.

Sec. 175. Every person who shall willfully and maliciously burn or injure any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose or set adrift any such raft, or part thereof, or shall cut, break, injure, sink, or set adrift any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months.

Sec. 176. Every person who shall willfully and maliciously cut, break, injure, or destroy any bridge, mill-dam, canal, flume, acqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining, manufacturing or agricultural purposes, or any embankment necessary to the same, or either of them, or shall willfully or maliciously make, or cause to be made, any aperture in such dam, canal flume, acqueduct, reservoir, embankment, or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisoned in the Territorial prison not less than one year, nor more than two years, or both such fine and imprisonment.

Sec. 177. If any person shall willfully and intentionally break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of said jail, or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the Territorial prison for any term not exceeding five years, nor less than one year.

Sec. 178. Any person who shall carelessly set fire to any timber, woodland, or grass, except for useful or necessary purposes, or who shall at any time make camp fire, or shall light any fire for any purpose whatever, without taking sufficient steps to secure the same from spreading from the immediate locality where the same may be used, or shall fail, in any instance, to put out or extinguish said fire, before leaving or abandoning the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, and shall be liable for all damages resulting from such act.

Sec. 179. Any person who shall wantonly or designedly set fire to any timber, wood, or grass, for other than necessary purposes, or who shall, from a malicious intent, fail to extinguish any fire after making the same for a necessary purpose, before leaving or abandoning the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred dollars, nor more than five hundred dollars, and be imprisoned in the county jail not less than one month, nor more than six months.

Sec. 180. Whoever inoculates himself, or any other person, with small-pox, or any other contagious disease, within this Territory, or shall expose any clothing infected with such disease, with intent to cause the prevalence or spread of such disease, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than three years.

CHAPTER XIII.

MISCELLANEOUS OFFENCES.

Sec. 181. *Putting in circulation bill, check, ticket, promissory note, etc., to circulate as money.*
Sec. 182. *Doing business without license required by law.*
Sec. 183. *Charter for bridge or ferry not intended to prevent free passage of crossings of streams.*
Sec. 184. *Penalty for obstructing ford across stream.*
Sec. 185. *Firing gun, pistol, or fire-arm, in a town.*
Sec. 186. *Assaulting warden or keeper and breaking jail.*
Sec. 187. *Violating election laws when the question of changing the seat of government is submitted.*
Sec. 188. *Punishing empiricism.*
Sec. 189. *Driving animals over bridge faster than a walk; duty of commissioners.*
Sec. 190. *Toll roads and bridges to be kept in repair.*
Sec. 191. *Ditches and flumes to be kept in repair.*
Sec. 192. *Offences concerning branding, marking and driving cattle.*
Sec. 193. *Keepers of gaming houses prohibited from permitting minors to gamble.*
Sec. 194. *Providing fire-escapes in buildings hereafter erected.*
Sec. 195. *In buildings now erected.*
Sec. 196. *Punishment for violating section 194.*
Sec. 197. *For violating section 195.*
Sec. 198. *Prohibiting interference with contractor.*
Sec. 199. *Interfering with the work on mining claims.*
Sec. 200. *Abetting and advising.*
Sec. 201. *Conspiracy with intent to violate.*
Sec. 202. *Attempting to commit offences.*
Sec. 203. *Of ditches and shafts near highways.*
Sec. 204. *Prohibiting dance and hurdy-gurdy houses.*
Sec. 205. *Of sale of intoxicating liquors to drunkards.*
Sec. 206. *Prohibiting selling of liquor on day of general election.*
Sec. 207. *Penalty for non-performance of official duty.*
Sec. 208. *Liability to civil action for damages.*
Sec. 209. *Fraud or oppression of officers.*
Sec. 210. *Of jurisdiction.*
Sec. 211. *Prohibiting killing of certain animals.*

SEC. 181. If any person, association, corporation, or company, unless authorized by some act of the Congress of the United States, shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, the said person or persons, association, company, or corporation, or the person or persons forming the same, shall, for the first offence, be deemed guilty of a misdemeanor, and for each and every subsequent offence, be deemed guilty of a felony, and shall be punished as hereinafter provided. Any person or persons who shall, upon indictment, be convicted of having violated the provisions of this section, shall be punished, for the first offence, by imprisonment in the county jail not more than three months, or by fine not exceeding two thousand dollars, or by both such fine and imprisonment; and for the second, and every subsequent offence, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than five years, at the discretion of the court before whom such person or persons may be tried and convicted. It shall be the duty of the district attorney for each judicial district in the Territory, to prosecute all offences against this section; and it shall be the duty of the judges of the courts to give this law in the charge of the grand jury, who shall inquire into and present all violations thereof: *Provided*, That the provisions of this section shall not be interpreted to include the passing of money which has been heretofore, or that shall hereafter be put in circulation by authority of the Dominion of Canada or by authority of the Kingdom of Great Britain.

NOTE.—The last proviso of the preceding section is taken from the Act of January 27th, 1879.

SEC. 182. Any person or persons who shall transact any business, trade, or occupation, or profession, for which a license is required by law, without first obtaining such license, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in any sum not less than twenty nor exceeding fifty dollars.

SEC. 183. No charter for a ferry or bridge company, granted by the legislature of this Territory, shall be so construed as to authorize such company to exclude or prevent the public from the free use of any ford that may cross any stream at or near the ferry or bridge of said company.

SEC. 184. The owner or keeper of such bridge or ferry shall not in any way obstruct the passage to or from any ford across any stream, and any person, upon conviction of obstructing any fording or ford, in any manner whatever, shall be liable to a fine of not less than fifty nor more that one hundred dollars.

SEC. 185. That it shall be unlawful for any person to fire any gun, pistol or any fire-arm, of whatever description, within the limits of any town, city, or village in this Territory, or within the limits of any private enclosure which shall contain a dwelling house.

All persons violating this section shall be fined in any sum not less than five, nor more than twenty-five dollars.

That all fines collected under the provisions of this section shall be paid into the county treasury, for the benefit of the school fund.

NOTE.—Act April 26th, 1873.

SEC. 186. If any prisoner confined in the penitentiary of this Territory shall assault the warden, or any under keeper, guard, or other officer of said penitentiary, or shall escape, or attempt to escape therefrom, or enter into any conspiracy for the purpose of effecting an escape therefrom, such person, upon conviction thereof, shall be sentenced by the court to the same term of imprisonment in the penitentiary for which such person was originally sentenced, to commence from the expiration of the original term of imprisonment, except when the original sentence was imprisonment for life.

If any person confined in any jail in any county in this Territory shall break such jail, or escape therefrom, or attempt so to do, or shall break or destroy the furniture of such jail, or shall assault any keeper of such jail, such person, on conviction thereof, shall be imprisoned in the penitentiary, at hard labor, for a time not exceeding three years, nor less than one year.

It shall be the duty of the warden of the penitentiary, and the keeper of any county jail in this Territory, to post up in the cells of the penitentiary and county jails, respectively, a printed copy of this section, printed in large letters so as to be easily read.

NOTE.—Act May 8th, 1873.

SEC. 187. If any person within this Territory, at any election, when the question of location of the seat of government is by law submitted to the electors for their approval or rejection, shall offer to vote thereon, knowing that he is not qualified so to vote, according to the law now in force, defining the qualifications of electors in this Territory, or who shall have voted once before at said election thereon, the person or persons so offering to vote thereon, whether his vote is received or rejected, shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be punished by a fine not less than one hundred nor more than one thousand dollars,and by imprisonment not less than one nor more than twelve months, in the discretion of the court.

If any judge or clerk of election, or county clerk, or commissioner, or any other officer or person charged by the laws now in force with any duty, at such election, shall knowingly receive the vote of any person not qualified to vote at such election, or shall make any forged, false, or fraudulent returns, or certify to such returns, or shall thereafter alter any true returns, or willfully miscount, change, alter or vary any poll-book, list, vote, or return, or shall certify to any fact not true, or shall do any other thing whatever to defeat the actual and true return and count of all lawful votes cast on that question, and none others than such lawful votes, or shall do or perform any act whatever, with the intent, and for the purpose of procuring any other person to make any false return, or count, or certificate, every such person so offending shall be deemed guilty of a felony, and being thereof convicted, shall be punished by imprisonment in the Territorial penitentiary, not less than one year, nor more than three years, and shall be forever thereafter incapable of holding any office of trust, honor, or profit, in the Territory of Montana.

NOTE.—Act February 12th, 1874.

SEC. 188. That it shall be unlawful for any person within the limits of said Territory, who has not attended two full courses of instruction and graduated at some school of medicine, either of the United States or some foreign country, or who can not produce a certificate of qualification from some State or county medical society, and is not a person of good moral character, to practice medicine, in any of its departments for reward or compensation, or attempt to practice medicine, or prescribe medicine or medicines for reward or compensation, for any sick person within the said Territory of Montana: *Provided*, That in all cases when any person has been continuously engaged in the practice of medicine for a period of ten or more years, he shall be considered to have complied with the provisions of this section. And that where persons have been in continuous practice of medicine for five years or more, they shall be allowed two years in which to comply with such provisions.

Any person living in the Territory of Montana, or any person coming into said Territory, who shall practice medicine in any of its departments, or perform or attempt to perform any surgical operation upon any person within the limits of said Territory, in violation of this section, shall, upon conviction thereof, be fined not less than fifty nor more than one hundred dollars, and for each subsequent violation of this section, shall, in addition to the above fine, be imprisoned in the county jail of the county in which said offence shall have been committed, for the term of thirty days, and in no case wherein this section shall have been violated shall any person so violating receive any compensation for services rendered: *Provided*, That nothing herein contained shall in any way be construed to apply to any person practicing dentistry.

NOTE.—Act February 3d, 1876.

SEC. 189. *First.* It shall hereafter be unlawful for any person or persons to ride or drive any animal over or across any public bridge, crossing any stream or river in the Territory of Montana, faster than a walk. And any person violating the provisions of this clause shall be adjudged guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

Second. It shall hereafter be unlawful for any person or persons to drive any loose stock, such as horses, mules or cattle, over or across any public bridge, crossing any stream or river in the Territory of Montana, in a larger number than fifteen head of such loose stock, at any one time. And any person violating the provisions of this clause shall be adjudged guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

It shall be the duty of the board of county commissioners to cause to be posted at each end of all bridges coming under the provisions of this section, notices setting forth substantially the provisions of this section.

NOTE.—Act February 5th, 1876.

SEC. 190. That any person or persons owning or possessing any unexpired right or title to or on any toll road or bridge, upon which toll is collected, under any charter or franchise heretofore granted by any legislative assembly of Montana Territory, shall be compelled to keep said road or roads, bridge or bridges, in a thorough state of repair.

Any party or parties not complying with the provisions of this section, shall, upon the complaint of any citizen of said Territory, be deemed guilty of a misdemeanor, and, upon conviction of the same before any court of competent jurisdiction, be liable to a fine of not less than twenty-five, nor more than one hundred dollars, and be adjudged to pay all costs of prosecution, or be imprisoned in the county jail for a term not less than ten nor more than sixty days.

NOTE.—Act February 11th, 1876.

SEC. 191. The owners of all ditches or flumes shall keep the same in such repair so that the water therein shall not overrun the sides thereof and run into and upon any public highway in the Territory of Montana.

Should the water of any ditch or flume at any time overflow its banks, and run into or upon any public highway, by reason of the negligence of the owner, the owner thereof shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than fifty dollars nor more than one hundred dollars.

It is hereby made the duty of all road supervisors, in their respective districts, to prosecute all persons violating the provisions of this section, and any such supervisor failing to perform the duty herein required of him shall be subject to a fine of not less than twenty dollars nor more than fifty dollars.

NOTE.—Act February 1st, 1877.

SEC. 192. If any person or persons shall hereafter mark or brand, or cause to be marked or branded, any horse, mule, ox, cow, sheep, swine, or other animal, the property of another person, whether the same be done by mistake or otherwise, such person or persons so marking or branding any such animal, or causing the same to be done, shall pay the owner of the same three times the value thereof; and any such owner shall have the right to sue in any court of competent jurisdiction, and recover from any such person or persons, marking or branding as aforesaid, three times the value of the animal so marked or branded.

That any person or persons who shall drive, or cause to be driven, any cattle, horses, mules, sheep or swine, from their customary range, without the permission of the owner or owners thereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof before any justice of the peace in the Territory of Montana, may be fined in any sum not less than five nor more than one hundred dollars, or may be imprisoned in the county jail for a period not less than ten days nor more than ninety days, or by both such fine and imprisonment, at the discretion of the court.

That if any person or persons shall cut off either or both ears close to the head of any cow, calf, ox, sheep, or swine, he or they shall be deemed guilty of misdemeanor, and, on conviction thereof, shall be fined in any sum not less than five nor more than twenty-five dollars, or by imprisonment in the county jail for a period not less than five nor more than thirty days, at the discretion of the court.

All fines collected under the provisions of this section shall be paid into the common school fund of the county where such offence was committed.

NOTE.—Act February 8th, 1877.

SEC. 193. Any person or persons keeping a gaming house or other house within the Territory of Montana, are hereby prohibited from permitting any minor, or person under the age of twenty-one years, from playing at any game of cards or chance within such house, for money, or any valuable thing.

Any person or persons keeping a gaming house or other house within the Territory of Montana, who shall hereafter permit any person under the age of twenty-one years to play at faro, or any other game of chance, with cards or dice, or other implement of gaming, within such house, for money, or other valuable thing, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in the sum of twenty-five dollars for the first offence, and fifty dollars for every additional offence.

NOTE.—Act February 16th, 1877.

SEC. 194. That all buildings hereafter erected to accommodate public assemblies, including churches, schools, concert halls, court houses, theatres, ball-rooms, and other buildings which are now or hereafter intended to be used as places of public assemblies of any kind or character, in the Territory of Montana, shall be constructed with a view of securing an escape in the event of a fire or alarm of fire, and all such buildings hereafter erected shall have the openings for ingress or egress furnished with doors which, in all cases, shall be so hung on hinges as that they shall open outwardly from the rooms in and from the main building itself.

SEC. 195. All such buildings now erected that are not constructed as provided in section 194, shall, within one year after the passage of this section, be so altered as to comply with its provisions.

SEC. 196. All persons constructing, owning, controlling, or in custody of any building, which shall be hereafter erected, and which is mentioned in section 194 of this chapter, and not constructed in accordance with the provisions thereof, shall be deemed guilty of a misdemeanor, and, upon conviction in a court of competent jurisdiction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred; and such building or buildings shall be closed by the court until the doors thereof shall be made to conform to the provisions of section 194.

SEC. 197. That all persons owning, controlling, or in custody of any building in this Territory, described in section 194, who shall fail to comply with the provisions of section 195, shall be guilty of a misdemeanor, and, on conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not more than fifty dollars, and such building shall be closed by the court until the doors thereof shall be made to conform to the provisions of sections 194 and 195.

NOTE.—Sections 194, 195, and 197, comprise the Act of February 16th, 1877.

SEC. 198. Every person who by force, or fraud, or by threats or intimidation, either by words, or writing, or actions, or exhibition of force, shall prevent, or interfere with, or hinder, or delay, any contractor, mechanic, laborer, workman, or employee, in the performance of any lawful contract, work, labor, or employment, for any person or company, or upon any terms, or at any price, or wages, to which such contractor, mechanic, laborer, workman, or employee may have agreed, or for which he may desire to work, or labor, or contract, shall be deemed guilty of felony, and, on conviction thereof, shall be punished by fine of not less than one hundred or more than five hundred dollars, or by imprisonment in the Territorial prison for a term of not less than one or more than three years, or by both such fine and imprisonment.

SEC. 199. Every person who by force, or fraud, or by threats of injury to person or property, or intimidation, either by words or writings, or actions, or exhibition of force, or otherwise, and without authority of law, shall prevent, or interfere with, or hinder, or delay, any person, company, or corporation, in the lawful use, or working, or enjoyment, or control, of any mining claim, mill, works, machinery, or other property, or in the lawful management, direction and control of any workman, or employee, of such person, company, or corporation, or in the working, or performance by such person, company, or corporation, of any lawful contract or agreement for hiring, or work, or labor, or other services, shall be guilty of a felony, and, on conviction, shall be punished as prescribed in section 198.

SEC. 200. Every person who shall knowingly aid, abet, assist, advise, or encourage any other person or persons to commit any of the offences mentioned in sections 198 and 199, and every person who, knowing any of such offences to have been committed, shall assist or aid the offender in escaping arrest, or trial, shall be guilty of felony, and, on conviction, shall be punished as provided in section 198.

SEC. 201. Every person who shall associate himself with or join any one or more persons with the intent, or for the purpose, of committing any of the offences mentioned in sections 198 and 199, or of aiding, abetting, assisting, achieving, or encouraging any other person or persons to commit such offences, or any of them, or of preventing the arrest, or trial, of such person or persons, who have committed or may commit such offences, or any of them, shall be deemed guilty of a conspiracy, and on conviction shall be punished by fine of not less than one hundred dollars, or more than five hundred dollars, or by imprisonment in the county jail not less than three nor more than twelve months, or by both such fine and imprisonment.

SEC. 202. Every person who shall attempt to commit any of the offences mentioned in sections 198, 199, 200 and 201, although the same be not actually committed, shall be punished as provided in section 201.

NOTE.—Sections 198 to 202, both inclusive, comprise the Act of February 21st, 1879.

SEC. 203. That any person or persons who may hereafter sink any shaft or run any drift, or cut or cause the same to be done within twenty feet of any trail, road, or public highway, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, in any court having competent jurisdiction, shall be fined in a sum of not less than five nor more than fifty dollars, at the discretion of the court, and shall be liable for all damages which may be sustained by any person or persons by reason of such shaft, drift, drain, or cut: *Provided,* That such person or persons sinking such shaft, or running such drift, drain, or cut, do not, within ten days after the same shall have been sunk, run, or cut, place a substantial covering or fence over or around such shaft, drift, drain or cut. *Provided further,* That farmers may cut irrigating ditches, and miners may cut mining ditches any depth not exceeding three feet, without being made liable to the provisions of this section.

All fines collected under the provisions of this section shall be paid into the county treasury for the benefit and use of the common schools of said county.

NOTE.—Act of December 27th, 1871.

SEC. 204. It shall be unlawful for any person or persons, within the Territory of Montana, to conduct or establish, or cause to be conducted or established, any dancing saloon or hurdy-gurdy house.

Any person or persons offending against the provisions of this section, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined in any sum not exceeding one hundred dollars.

NOTE.—Act of April 28th, 1873.

SEC. 205. That any person who shall sell or give intoxicating liquors to any man or woman who is in the habit of becoming drunk or intoxicated, or of drinking intoxicating liquors to excess, after being notified of such habit, or coming to a knowledge thereof, or who shall sell or give intoxicating liquors to any minor, without the consent of the parent or guardian of such minor, shall be liable in damages to any person who may be injured thereby, in money, property, or means of support, and such person so selling or giving intoxicating liquors as aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment, in the discretion of the court.

Any married woman may sue in her own name, and a minor by guardian or next friend, for the purpose of recovering the damages named in this section and costs of suit.

NOTE.—Act of April 30th, 1873.

SEC. 206. Hereafter it shall be unlawful for any person, either as principal, agent, or otherwise, on any general election day to sell, barter, give or furnish, or cause to be furnished to any person or persons whomsoever, any spirituous or malt liquors, wine or cider, or any intoxicating liquors or intoxicating drinks of any kind or character.

That each and every person violating any of the provisions of this section shall, for each offence, upon conviction thereof, be punished by a fine not less than ten dollars, nor more than two hundred and fifty dollars.

The provisions of this section shall not be construed to include druggists or other persons who shall in good faith sell or dispose of the articles hereinbefore mentioned for medicinal or mechanical purposes only.

NOTE.—Act of February 11th, 1876.

SEC. 207. If any officer, board, or commission charged by law with any official duty, shall neglect or willfully fail or refuse to fully do, perform or discharge such duty, such officer, and the members comprising such board, or commission, responsible therefor, shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment of not less than ten days nor more than one year, or by both such fine and imprisonment in the discretion of the court. And if such imprisonment shall not be for more than three months, the same shall be in the county jail of the county in which such offense was committed; but if the said imprisonment shall exceed three months, then such imprisonment shall be in the penitentiary.

SEC. 208. If any officer or member of any board or commission shall be convicted of a violation of section 207, such officer or member of such board or commission, shall be liable to the municipality damaged by such neglect, failure or refusal, for any and all damages which such municipality has suffered thereby, recoverable in an action brought for that purpose, as are other actions at law.

SEC. 209. If any officer or the members of any board or commission, under color of their office, shall be guilty of any fraud, oppression, extortion, or deceit, they shall be deemed guilty of a misdemeanor, and shall also be liable to the party injured thereby to the extent of such damage, with exemplary damages, if the same was malicious. And if any such officer or member shall be convicted of the misdemeanor in this section defined, he shall be punished by a fine of not less than ten nor more than five hundred dollars, or may be imprisoned in the county jail not less than ten days nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

SEC. 210. The district court shall have jurisdiction of the misdemeanor herein defined, and the district judge shall give in charge to the grand jury the misdemeanor defined in section 207, and charge them that they shall diligently enquire and duly present all persons violating the same.

NOTE.—Sections 207 to 210, both inclusive, comprise the Act of February 11th, 1876.

SEC. 211. That any person who shall willfully shoot, or otherwise kill, for the period of ten years from and after the passage of this section, any buffalo or bison within the counties of Madison, Jefferson, Deer Lodge and Lewis and Clarke, Montana Territory, shall be fined not less than one hundred dollars, nor more than two hundred dollars; or imprisonment in the county jail not less than two months and not more than six months, or, both such fine and imprisonment, at the discretion of the court.

That the possession of the green hides, or the dead bodies, or any part thereof, of any buffalo or bison, by any person or persons, within the limits of said counties, shall be taken as *prima facie* evidence that such person or persons are guilty of killing the same.

Any person informing on any person violating the provisions of this section shall, upon the conviction of such person, be entitled to one-fourth of the fine collected.

It is hereby made the duty of the judges of the district courts held in the respective counties of Deer Lodge, Jefferson, and Lewis and Clarke, to give in charge to the grand juries of said counties the provisions of this section.

NOTE.—Act February 21st, 1879.

CHAPTER XIV.

GENERAL PROVISIONS.

Sec. 212. *Crimes at common law not herein enumerated; punished.*
Sec. 213. *Effect of sentence of imprisonment in penitentiary.*
Sec. 214. *Term "person" defined.*
Sec. 215. *Provisions of this act extend to females.*

Sec. 216. *Sufficient to show when intent to injure or cheat is required by law.*
Sec. 217. *Governor may issue reward for escaped felon.*
Sec. 218. *Attempt to commit public offence; how punished.*
Sec. 219. *Repealing clause.*
Sec. 220. *Reward for the capture of robbers.*

SEC. 212. All offences recognized by the common law as crimes, and not here enumerated, shall be punished, in case of felony, by imprisonment in the Territorial prison for a term not less than one year, nor more than five years; and in case of misdemeanor, by imprisonment in the county jail for a term not exceeding six months, nor less than one month, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. And whenever any fine is imposed for any felony or misdemeanor, whether such be by statute or at common law, the party on whom the fine is imposed shall be committed to the county jail, when not sentenced to the Territorial prison, until the fine is paid; and he shall be imprisoned at the rate of one day for each two dollars until such fine is paid.

SEC. 213. A sentence of imprisonment in the Territorial prison for a term less than life suspends all civil rights of the person so sentenced during the term of imprisonment, and forfeits all public offices and all private trusts, authority, and powers; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead.

SEC. 214. When the term "person" is used in this division to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this Territory, or any other Territory or State government, or county which may lawfully own any property within this Territory, and all pnblic and private corporations, as well as individuals.

SEC. 215. The provisions of this division shall extend to females.

SEC. 216. When any intent to injure, defraud, or cheat is required by law to be shown, in order to constitute any offence, it shall be deemed sufficient if such intent be to injure, defraud, or cheat the United States, this Territory, or any other State, Territory, or county, or the government, or any public office thereof, or any county, city, or town, or any corporation, body politic, or private individual.

SEC. 217. If any person who has been sentenced to confinement in the Territorial prison by any court having competent authority within this Territory, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or her apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the Territorial treasury; and the amount which any governor or acting governor of this Territory may offer as a reward for the apprehension of any prisoner, as aforesaid, is hereby appropriated out of the Territorial treasury, to be paid out of any money not otherwise appropriated; and it is hereby made the duty of the Territorial auditor to issue to the person or persons whom he may determine is entitled to such reward, a warrant on the Territorial treasurer therefor.

SEC. 218. Every person who shall attempt to commit a public offence, and in such attempt shall do any act toward the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, in cases where no provision is made by law for the punishment of such attempt, shall be punished as follows:

First. If the offence so attempted to be committed be such as is punishable by death, or by imprisonment in the Territorial prison for a term which may extend to life, the person convicted of such attempt shall be punished by imprisonment in the Territorial prison not exceeding ten years.

Second. If the offence so attempted is a misdemeanor, the person so convicted shall be punished by a fine not exceeding one-half of the largest amount, or by imprisonment in the county jail or Territorial prison, as the case may be, for a term not exceeding one-half the longest time prescribed by law, upon a conviction of the offence so attempted.

Third. If the offence so attempted is a felony not punishable by death or imprisonment which may extend to life, the person convicted of such offence shall be punished by imprisonment in the Territorial prison not exceeding one-half the longest time which may be imposed on conviction of the offence so attempted.

SEC. 219. All acts and parts of acts conflicting herewith, as to crimes committed after this act shall go into effect, are hereby repealed. All laws heretofore existing upon the subject of crimes and punishments shall remain in full force and effect as to all crimes committed before this act goes into effect.

NOTE.—The preceding 219 sections, except where otherwise specially noted, are from the Act of January 12th, 1872, and took effect August 1st, 1872.

SEC. 220. The governor shall offer a standing reward of three hundred dollars for the arrest of each person engaged in the robbery of, or in an attempt to rob, any person or persons upon, or having in charge, in whole or in part, any stage coach, wagon, railroad train, or other conveyance, engaged at the time in carrying passengers, or any private conveyance within this Territory, the reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested, but no reward shall be paid except after such conviction.

NOTE—Act of February 16th, 1877.

FIFTH DIVISION.

GENERAL LAWS.

CHAPTER I.

ANIMALS.

[*See Chapter XXVI. Game.*]

ARTICLE I.

PROHIBITING THE USE OF ANIMALS RANCHED OR STABLED.

Sec. 1. *Penalty for using animals.*

Sec. 1. That if any person keeping a public ranch or stable shall use, or allow to be used, without the consent of the owner, any horse, ox, mule, or ass, that may have been left with him to be ranched or fed, he shall forfeit to the owner all ranch or stable fees that may be due upon such animal used, and the additional sum of twenty-five dollars for each day such animal may have been used, to be collected in the same manner as other debts.

ARTICLE II.

SALE OF ANIMALS AT AUCTION.

Sec. 2. *Any person may be licensed to sell stock at auction.*
Sec. 3. *Persons' names who offer stock to be recorded.*
Sec. 4. *Auction keeper entitled to charge for recording.*
Sec. 5. *Any one violating this act to be fined.*

Sec. 2. Any person who may be licensed in this Territory to keep an auction where horses, mules, asses, jennies, and cattle, are sold at auction, shall open a book called a Stock Register, in which he shall describe minutely every animal he shall offer for sale, and before proceeding to sell the same.

Sec. 3. In such register shall be recorded the person's name who brings forward such animal for sale, and whether or not he is the owner of the same, and if not the owner, the name of the owner, with his residence; also the color, brand or mark, size and age, as near as may be, of the animal so offered for sale.

Sec. 4. The keeper of such auction shall be entitled to charge and receive for the registering each animal so entered in his register, before he shall offer the same for sale, the sum of twenty-five cents; and all "stock registers" shall be open for inspection and reference to any person who may wish to examine the same, and shall be evidence in any court where the trial of the rights of property may be had.

Sec. 5. Any person who shall offer for sale at auction any animal named in section 2, of this article, without having first complied with the requirements of this article, shall, upon conviction thereof before any court of proper jurisdiction, be fined in the sum of fifty dollars, to be collected as other fines, and paid into the county treasury for the use of the county.

ARTICLE III.

OF ANIMALS TRESPASSING.

Sec. 6. *Owner of animals liable in damages for trespass on land.*
Sec. 7. *Owner of enclosure liable for injury of animals; may take up and keep animals doing damage.*
Sec. 8. *Two or more persons cultivating lands shall not place animals upon it.*

Sec. 6. If any horse, mule, jack, jennie, hog, sheep, or any kind of neat cattle, shall break into any ground enclosed by a lawful fence, the owner or manager of such animal shall be liable to the owner of such enclosed premises for all damages sustained by such trespass; and if the trespass be repeated by the neglect of the owner or manager of such animals, he, or she, or they, shall, for the second or every subsequent offence or trespass, be subject to double the damages of such trespass to the owner of said premises: *Provided*, The owner, or occupier, of such grounds or crops so damaged and so trespassed upon may take up, and safely keep, at the expense of the owner or owners thereof, after due notice to said owners of such animals, the said animals, or as many of them as may be necessary to cover the damages he may have sustained, for ten days; and before restitution shall be had by the owner or owners of such animals, all damages done by them, as well as the expense of posting and keeping them, shall be paid. Any justice of the peace in the township or precinct shall have jurisdiction of all such reclamation of animals, together with the damages, expenses of keeping, and posting the same, where the amount claimed does not exceed one hundred dollars.

Sec. 7. If any owner, or occupier, of any grounds or crops trespassed upon by animals entering upon or breaking into his, or her, or their, enclosures, whether the same be enclosed by a lawful fence or not, shall maim, or materially injure, the animal or animals so trespassing, he, she, or they, shall be liable to the owner or owners of such stock for all damages, and for the costs accruing from a suit for damages, when necessarily resorted to for their recovery.

Sec. 8. When two or more persons shall cultivate lands under one enclosure, neither of them shall place, or cause to be placed, any animal on his, her, or their ground to the injury or damage of the other, or others, but shall be liable for all damages thus sustained by the other, or others; and if repeated, after due notice is given, and for every subsequent repetition, double damages, to be recovered in any court having jurisdiction.

ARTICLE IV.

CONCERNING STALLIONS, ETC.

Sec. 9. *Stallion, mule, or jack, not to run at large.*
Sec. 10. *Any person may castrate horse or jack found at large.*

SEC. 9. If any stallion or stud horse, ridgling, or any unaltered male mule or jackass over the age of two years, be found running at large, the owner shall be fined for the first offence ten dollars, and for each subsequent offence not more than fifty nor less than twenty-five dollars, to be recovered by civil action, before a justice of the peace, in the name of any person who will prosecute for the same, one-half to his own use and the other half to the use of the county.

SEC. 10. Any person may take up any such horse, mule, or jackass found running at large, and if not claimed in five days, may castrate him, such castration being performed in the usual manner, so that the life of the animal be endangered as little as possible.

ARTICLE V.

BLOODED STOCK.

Sec. 11. *Exempt from taxation for one year.*
Sec. 12. *Certificate of pedigree.*

SEC. 11. That all thoroughbred stallions and jacks, and all horned cattle with pedigree recorded in American and English herd books, and all imported sheep and swine, shall be exempt from assessment and taxation for one year after their arrival in this Territory; but it shall be the duty of the assessor to assess all such property at its cash value, but in the list and assessment rolls he shall write the word "exempt," opposite the entry of all such property.

SEC. 12. The owner or owners of such stallions, jacks, horned cattle, sheep, or swine, shall be required to produce to the assessor of the county in which such stock is kept, a certified copy of pedigree or record of herd book or books, as aforesaid.

ARTICLE VI.

DISEASED ANIMALS.

Sec. 13. *Diseased horses, cattle, etc., not to run at large on the public range.*

SEC. 13. It shall be unlawful for the owner or owners, or for any person or persons having in charge any horse, mule, ass, or horned cattle affected with any contagious disease, to allow said diseased animal or animals to run on the public range. All animals so affected with contagious disease shall be at once removed by the owner or owners thereof, or the person or persons in charge of the same, from the public range to some secure inside enclosure, where contact with other animals by reaching over or through the fence of said enclosure will be impossible, or shall be strictly herded six miles away from any farm, or from any other stock running at large or being herded. Every person who shall knowingly neglect or refuse to remove, or so enclose, or herd away, from farms or other stock, such diseased animals affected with contagious disease, shall be liable to be arrested, and on conviction before any court of competent jurisdiction, shall be fined in any sum not less than fifty dollars, nor more than five hundred dollars, and shall also be liable for damages to the party or parties injured by such diseased animals running at large, after having received notice of their diseased condition: *Provided*, That this section shall not be construed so as to prevent owners of diseased animals from traveling over the main thoroughfares that pass through narrow canons.

NOTE.—Act February 11th, 1876.

ARTICLE VII.

DISEASED SHEEP.

Sec. 14. *Diseased sheep to be kept and herded apart from others.*
Sec. 15. *Not to be driven on highway.*
Sec. 16. *Not to range more than two miles from headquarters.*
Sec. 17. *Owner of sheep has right to examine band of sheep.*
Sec. 18. *Penalty for carrying the parasite.*
Sec. 19. *Penalty for violating sections 14 and 15.*
Sec. 20. *Person violating liable for damages.*
Sec. 21. *Disposition of fine imposed.*
Sec. 22. *In civil action attachment may issue.*
Sec. 23. *In criminal action, sheriff to take the sheep.*

SEC. 14. That the owner or owners of, or the person or persons in charge of, any sheep in the Territory of Montana, or which may hereafter be brought or raised within the Territory, which are now, or shall hereafter be, affected with the scab, or any infectious or contagious disease, shall keep the said sheep securely within some enclosure, or shall herd them at a distance of not less than six miles from all farms, corrals, sheds, or other established headquarters, where sheep are kept or are being herded: *Provided*, That any person or persons owning sheep affected with the scab, or any infectious or contagious disease, who have, prior to the passage of this act, established headquarters, shall be allowed to range such sheep upon the public domain within six miles in any direction of such established headquarters: *Provided*, They be not allowed to range within three miles of any other headquarters, unless the other headquarters be less than six miles distant, in which case such sheep shall not be herded nearer to the other headquarters than a distance equal to one-half the distance between the two headquarters.

SEC. 15. It shall be unlawful for any person or persons owning sheep affected with the scab, or any infectious or contagious disease, to drive, or permit the same to be driven, upon any public highway, or within the distance of one mile of any such highway, or within six miles of any farm, corral, shed, or other established headquarters, where sheep are kept, or are being herded.

SEC. 16. It shall be unlawful, after March 1st, A. D. 1881, for any owner or owners of sheep affected with the scab, or any contagious or infectious disease, to drive, or cause to be driven, or permit such sheep to range a greater distance than two miles from his, or their, headquarters.

SEC. 17. Any person owning sheep, or any one in his employ, shall have the right to examine any band of sheep that shall be driven within six miles of his headquarters, and any person or persons in charge of such sheep shall stop them and allow them to be examined, and shall render the necessary assistance in catching and examining them. If the person so in charge of such sheep refuse to render the assistance as above required, he shall be punished as is provided for a violation of the provisions of section 15 of this article.

SEC. 18. Any person who shall carry, or drive, or cause to be carried or driven, one or more sheep affected with the scab, or any infectious or contagious disease, into a herd of sheep belonging to another person, or shall carry, or cause to be carried, the "parasite," which causes such scab, or disease, and place it where another person is corraling or herding sheep, so that such sheep may become affected thereby, shall be adjudged guilty of a felony, and, upon conviction thereof, shall be confined in the Territorial prison not less than five years nor more than ten years, and be fined in any sum not less than one thousand dollars.

SEC. 19. Any person who shall be convicted of the violation of the provisions of either sections 14, 15 or 16 of this article, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than three hundred nor more than six hundred dollars.

SEC. 20. Any person violating any of the provisions of this article, shall be liable in damages to any person or persons injured thereby, directly or indirectly, to be recovered in a civil action in any court of competent jurisdiction.

SEC. 21. One half of the fine imposed in any action prosecuted under the provisions of this article, shall be paid to the owner of the sheep who shall have, either personally or by his employee, prosecuted the action by informing upon the defendant in said action, and the other part thereof shall be paid into the county treasury for the benefit of the school district of the county where said offence was committed.

SEC. 22. That in all civil actions under the provisions of this article for the recovery of damages, or of any penalty for a violation of any of its provisions, the plaintiff in such action shall be entitled to an attachment against the property of the defendant to secure the payment of any judgment that the plaintiff may recover, and the provisions of the Civil Practice Act of this Territory in relation to attachments, as to the method of obtaining the same, shall be applicable thereto, and that all attachments proceeding under the provisions of this article, shall be governed by the provisions of said practice act, except that the affidavit for the attachment shall only state that the plaintiff has been damaged by the sheep of the defendant, stating the amount of damages sustained. The undertaking for the attachment need only be executed in the sum claimed as damages.

Sec. 23. In any criminal action begun under the provisions of this article, the sheriff shall take into his possession, and safely keep, the sheep of the defendant, and hold the same until the termination of the action, as security for the payment of any fine, or penalty, that may be inflicted, unless the defendant shall deliver to the sheriff an undertaking with at least two sufficient sureties in the penal sum of six hundred dollars, conditioned that the defendant will pay all fines, or costs, which may be adjudged against him upon the final determination of the action.

Note.—Act February 21st, 1879.

CHAPTER II.

ARSENALS—ARMS—APPROPRIATIONS.

ARTICLE I.

APPROPRIATIONS TO HISTORICAL SOCIETY AND LAW LIBRARY.

Sec. 24. *Annual appropriation to law library.*
Sec. 25. *To historical society.*
Sec. 26. *Duties of officers; reports, etc.*

Sec. 24. That the sum of two hundred dollars be and the same is hereby appropriated out of any moneys in the treasury not otherwise appropriated, each year, for the purchase of law reports in continuation of the series now in the Territorial law library, and such other law books as may be selected by the chief justice and the associate justices of the supreme court, or any two of them.

Sec. 25. That the sum of one hundred and fifty dollars be and the same is hereby appropriated each year out of any money in the treasury not otherwise appropriated, to the Historical Society of Montana, to be expended for the purchase of manuscripts and books illustrating the early history of the region of country now embraced within this Territory, and in paying the postage and express charges thereon, and for such necessary printing as its officers may deem necessary to be expended by the president, secretary and librarian thereof.

Sec. 26. That on or before the first day of June, 1873, and each year thereafter before said date, it shall be the duty of the Territorial auditor, upon the request of any two justices of the supreme court of the Territory, to draw his warrant on the Territorial treasurer, payable to their order, or the order of one of them, for the said sum of two hundred dollars, and to deliver to said justices said warrant, and, upon the like request of the officers of the historical society mentioned in section 25 of this article, or any two of them, to draw his warrant on the Territorial treasurer for the sum of one hundred and fifty dollars, payable to the order of said officers, or any one of them, and deliver the same to them, or some one of them, in pursuance of this article, annually thereafter, to draw and deliver like warrant on or before June first of each year, and to deliver the same as herein provided in this section, and according to sections 24 and 25 of this article, in like form and with like intent, and payable on like terms as are other warrants on the treasury: *Provided*, That the justices of the supreme court and the officers of said society, shall, annually, on or before December first of each year hereafter, make to the governor of the Territory a report of the expenditures of said money and the condition of the respective libraries, with such suggestions as to their increase and usefulness as may occur to them, with such other information as in their judgment would be of interest to the people of the Territory, and which said reports the governor shall transmit to the legislative assembly: *And, provided further*, That if the said auditor shall see fit, he may, at any time, require security for the faithful application of said moneys so appropriated, and unless the said society shall accept the terms and conditions of this section imposed as to its reports, and signify the same to said auditor within six months from the taking effect of this article, it shall not be entitled to avail itself of the privileges and advantages conferred by this article thereafter.

NOTE.—Act May 7th, 1873.

ARTICLE II.

ARSENALS, ARMS, AND AMMUNITION.

Sec. 27. *Keeper of arsenal to report.*
Sec. 28. *Duty of keeper.*
Sec. 29. *Bond and official oath.*
Sec. 30. *Governor to collect arms; salary of keeper.*
Sec. 31. *Bond of party who receives arms.*
Sec. 32. *Appropriation.*

SEC. 27. It shall be the duty of any keeper of the arsenal, military stores, ammunition, arms and ordnance belonging to this Territory, on the first day of February, A. D. eighteen hundred and seventy-two, and on the first of January of each year thereafter, to report to the governor in writing the amount of such military stores and ammunition, and a list and description of such arms and ordnance in his possession and within his knowledge.

SEC. 28. It shall be the duty of the keeper to take care of and preserve the same, and deliver the same only upon the written order of the governor.

SEC. 29. Such keeper shall, before entering upon the duties of his office, file with the Territorial secretary his official bond, in the sum of one thousand dollars, with two good and sufficient sureties, to be approved by the governor, conditioned for the faithful performance of the duties of his office, and shall also file his oath of office with the secretary; and any such keeper now holding such office, shall within thirty days file such bond and official oath, or his office will be deemed vacant.

SEC. 30. The governor is hereby authorized to collect at the capital all the arms and ammunition, ordnance, military stores and equipments, and place them in a suitable building in charge of a keeper, at a salary not to exceed two hundred dollars per annum.

SEC. 31. It shall be the duty of the governor to require of any person to whom such arms, ammunition, ordnance, military stores or equipments may be delivered, to execute a bond to the Territory in the sum not to exceed the value thereof with such sureties as may be approved by him, conditioned for the safe keeping of the same, and the return thereof on the demand of the governor, unless the same shall have been delivered to the county commissioners of any county, when the same shall be charged to such county at the value thereof, to be returned when called for by the governor.

SEC. 32. The sum of one hundred and fifty dollars is hereby appropriated out of the Territorial treasury to defray the expense of collecting such arms, etc., as required in section 30.

NOTE.—Act January 6th, 1872.

ARTICLE III.

OF THE CARE AND CUSTODY OF TERRITORIAL ARMS AND AMMUNITION.

Sec. 33. *Description and ownership of arms.*
Sec. 34. *Governor to take charge of.*
Sec. 35. *How apportioned to the counties, etc.*
Sec. 36. *Issue of arms to military companies.*
Sec. 37. *Arms issued not to be sold, penalty for violation.*
Sec. 38. *Issue to others than militia.*
Sec. 39. *Provisions for expenses incurred.*

SEC. 33. That the following named arms, accoutrements, and ammunition, to-wit: Five hundred Springfield rifled muskets, five hundred screw-drivers, fifty spring vises, one hundred tumbler punches, five hundred gun-slings, five hundred waist-belts, five hundred waist-belt plates, twenty-five thousand musket-ball cartridges, are, and are hereby declared to be the property of the Territory of Montana, and the said Territory assumes all responsibility regarding the care and custody of the said arms and ammunition, and all obligations to the United States on account of the same.

SEC. 34. That for the more fully carrying out the provisions of this article, the governor of this Territory shall take charge of the hereinbefore mentioned arms and ammunition, and shall give such orders as he may think proper, or as shall be provided for by law, regarding their care and distribution.

SEC. 35. The governor shall apportion the before-mentioned arms and ammunition belonging to the Territory among the several counties, in such manner as he shall think best: *Provided*, That, when possible, a sufficient number shall be given to any county to completely arm and equip any militia companies that may be organized in such county. Such arms and ammunition shall be delivered by the governor to the sheriff of the county, who shall be responsible, on his official bond, for the care and safe keeping of such arms and ammunition, and for the delivery thereof in accordance with orders that he may receive from the governor: *Provided, further,* That the governor shall have the right, and it is hereby made his duty, on application being made, to sell to any citizen of this Territory such arms and ammunition as he may think proper, at prices as fixed by the United States authorities—all proceeds from such sales to be paid into the Territorial treasury. The parties purchasing such arms and ammunition shall be entitled to receive a certified invoice of the property from the governor or other officer delivering the property to him, and such certified invoice shall be *prima facie* evidence of the ownership of such property, and such party shall thereafter be exempt from the fines and penalties hereafter provided for in this article.

SEC. 36. Whenever a company is organized in any county as hereinbefore provided, the sheriff of such county shall issue to such company such arms, accoutrements, and ammunition, as he may be directed to issue by the governor, taking therefor a receipt signed by the duly elected officers of such company, and a bond conditioned for the careful keeping and safe return of such arms and accoutrements, or the payment of such sums as the same may be worth, in case of their loss or injury.

SEC. 37. The arms, accoutrements, or ammunition, issued to any officer or militiaman shall not be sold, bartered, exchanged, pledged, loaned, or given away, and no person not a member of an organized militia company, or duly authorized officer, except as hereinbefore or may be hereinafter provided, who has possession of any such arms, accoutrements, or ammunition, so furnished, shall have any right, title, or interest therein, but the same may be seized wherever found by any officer, civil or military, and turned over to the sheriff of the county where such arms belong. Every person who shall violate the provisions of this section by selling, bartering, exchanging, loaning, pledging, or giving away any such arms, accoutrements, or ammunition, and any person who shall, in any such sale, exchange, barter, pledge, loan, or gift, receive any such arms, accoutrements, or ammunition, shall be deemed guilty of a misdemeanor, and upon conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not less than twenty nor more than one hundred dollars, and shall be imprisoned in the county jail until such fine is paid. The possession of such arms, accoutrements, or ammunition, shall be *prima facie* evidence of such sale, barter, exchange, pledge, loan, or gift.

SEC. 38. The governor may, whenever in his judgment it may become necessary, issue to, or order issued by the sheriff of any county that may have the same in charge, such arms and ammunition as may be considered necessary to persons not members of any organized militia company, but such persons shall conform to the provisions of section 37, and be subject to all fines and penalties therein prescribed.

SEC. 39. That such sums of money as may now be due, or that may hereafter become due, for storage of arms and ammunition before their issue as herein prescribed, and such further sums, for such expenses, as may be necessarily incurred, shall be paid by the Territory, and the Territorial auditor is hereby authorized and instructed to draw his warrant on the Territorial treasurer for such amount as may be certified to him by the governor as being due.

NOTE.—Act February 16th, 1877.

CHAPTER III.

ATTORNEYS.

ARTICLE I.

ATTORNEYS AND COUNSELORS AT LAW.

Sec. 40. *No person permitted to practice as an attorney without license.*
Sec. 41. *No one to receive license without certificate of moral character.*
Sec. 42. *Supreme court to appoint examining committee.*
Sec. 43. *Clerk of Supreme court to keep record of names.*
Sec. 44. *No one to practice whose name not on roll.*
Sec. 45. *Attorney not paying over money may be stricken from the roll.*
Sec. 46. *Clerk to notify attorney of charges against him.*
Sec. 47. *Officers of court subject to same process as others, but privileged from arrest during court.*
Sec. 48. *Attorneys in other States; how admitted.*
Sec. 49. *Any person not licensed receiving fees may be sued for treble amount, and prosecuted for signing name of judge or attorney.*
Sec. 50. *No renewal of license required.*
Sec. 51. *Attorneys of adjacent States admitted to transactbusiness.*
Sec. 52. *Attorneys to be admitted to prisoners.*
Sec. 53. *No attorney to become security on bonds.*
Sec. 54. *To have lien on judgment for fees.*

Sec. 40. No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action, suit, or plaint, in which he is not a party concerned, in any court of record within this Territory, either by using or subscribing his own name, or the name of any other person, without previously having obtained a license for that purpose from some two of the justices of the supreme court, which license shall constitute the person receiving the same an attorney and counselor at law, and shall authorize him to appear in all the courts of record within this Territory, and there to practice as an attorney and counselor at law, according to the laws and customs thereof, for and during his good behavior in said practice, and to demand and receive all such fees as an attorney and couselor at law in this Territory.

Sec. 41. No person shall be entitled to receive license as aforesaid until he shall have obtained a certificate from the court of some county, of his good moral character, also a certificate from one or more reputable counselors at law, that he has been engaged in the study of law for two successive years prior to the making of such application.

Sec. 42. It shall be the duty of the supreme court to appoint a standing committee of three attorneys at law for each judicial district of this Territory, whose duty it shall be to examine all applicants for license as aforesaid, and if, upon such examination, a majority of such committee shall deem the applicant qualified to practice as an attorney and counselor at law in the courts of this Territory, they shall sign a certificate to that effect, and transmit the same to the clerk of the supreme court.

Sec. 43. It shall be the duty of the clerk of the supreme court to make out and keep a roll or record, stating at the head or commencement thereof that the persons whose names are therein written have been regularly licensed and admitted to practice as attorneys and counselor at law within this Territory, and that they have duly taken the oath to support the Constitution of the United States and the organic act of this Territory, and also the oath of office prescribed by law, which shall be certified and endorsed on said license.

SEC. 44. And no person whose name is not subscribed to or written on the said roll, with the day and the year when the same was subscribed thereto, or written thereon, shall be suffered or admitted to practice as an attorney or counselor at law within this Territory, under the penalty hereinafter mentioned, anything in this act to the contrary notwithstanding; and the justices of the supreme court in open court shall have power, at their discretion, to erase the name of an attorney or counselors at law from the roll for mal-conduct in his profession.

SEC. 45. In all cases where an attorney of any court of this Territory, or solicitor in chancery, shall have received, or may hereafter receive, in his said office of attorney or solicitor, in the course of collection or settlement, any money or other property belonging to any client, and shall, upon demand made, and a tender of his reasonable fees and expenses, refuse or neglect to pay over or deliver the same to the said client, or to any person duly authorized to receive the same, it shall be lawful for any person interested to apply to the supreme court of this Territory for a rule upon the said attorney or solicitor to show cause, at a time to be fixed by the said court, why the name of said attorney or solicitor should not be stricken from the roll, a copy of which rule shall be duly served on said attorney or solicitor at least ten days previous to the day upon which said rule shall be made returnable; and if, upon said rule, it shall be made to appear to the said court that such attorney or solicitor has improperly neglected or refused to pay over or deliver said money or property so demanded as aforesaid, it shall be the duty of said court to direct that the name of said attorney or solicitor be stricken from the roll of attorneys in said court.

SEC. 46. Every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be heard in his defence, and allowed reasonable time to collect and prepare testimony for his justification; and any attorney whose name shall at any time be stricken from the roll by order of the court, in the manner aforesaid, shall be considered as though his name had never been written thereon, until such time as the said justice, in open court, shall authorize him to sign or subscribe the same.

SEC. 47. All attorneys or counselors at law, judges, clerks, and sheriffs, and other officers of the several courts within this Territory, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may, in all respects, be prosecuted and proceeded against in the same court and in the same manner as other persons are, any law, usage, or custom to the contrary notwithstanding: *Provided, nevertheless,* said judge, counselors, and attorneys of said court, shall be privileged from arrest while attending courts, and while going to and returning from court.

SEC. 48. Any person producing a license or other satisfactory voucher, proving that he hath been regularly admitted an attorney at law in any court of record within the United States, that he is of good moral character, may be licensed and permitted to practice as a counselor and attorney at law in any court in this Territory without examination.

SEC. 49. If any person not licensed as aforesaid shall receive any money or any species of property as fee or compensation for services rendered, or to be rendered, by him as attorney or counselor at law within this Territory, all money so received by him shall be considered as money received to the use of the person paying the same, and may be recovered back with costs of suit by an action for money had and received, and all property conveyed or delivered for the purpose aforesaid, or the value thereof, may be recovered back with costs of suit by the person conveying or delivering the same, by action of detenue or trover and conversion, and the person receiving such money or property shall forfeit threefold the amount or value thereof, to be recovered with costs of suit before any magistrate, if within a magistrate's jurisdiction, but if not, in any court of record within the Territory, by action of debt *qui tam*, the one-half to the use of the person who shall sue for and recover the same, and the other half to the use of the county in which suit shall be brought, and if any person shall sign, or cause to be signed, the name of any attorney, or either of the judges of the supreme court, to any certificate or license provided for in this act, with an intent to deceive, such person shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

SEC. 50. Plaintiff shall have the liberty of prosecuting, and defendant shall have the privilege of defending in their proper persons, and nothing herein contained shall be so construed as to affect any person heretofore admitted to the degree of attorney or counselor at law in this Territory, so as to subject them to further examination, or to make it necessary for them to renew their license.

SEC. 51. Whenever any counselor at law residing in any of the adjacent States or Territories may have any business in any of the courts of this Territory, he may be admitted on motion for the purpose of transacting such business, and none other.

SEC. 52. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons, having in custody any person committed, imprisoned, or restrained of his liberty, for any alleged cause whatever, shall admit any practicing attorney at law in this Territory whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned alone and in private, at the jail, or other place of custody. Any officer violating this provision shall forfeit and pay one hundred dollars to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

SEC. 53. No attorney or counselor at law or solicitor in chancery shall become security in any bond or recognizance of any sheriff, constable, or coroner, or in any bond or recognizance for the appearance of any person or persons charged with any public offence, or upon any bond or recognizance authorized by any statute to be taken for the payment of any sum of money into court in default of the principal, without the consent of the judge of the district court first had, approving said security.

SEC. 54. All attorneys and counselors at law shall have a lien upon all moneys in their hands, and upon all judgments they may have obtained for any clients for any fees or balance of fees due or to become due, for any professional services rendered by them in any court or courts of this Territory; such lien to be deemed to attach from the commencement of such action or the performance of such services; and shall extend to and include reasonable fees therefor: *Provided*, That notice of lien claimed upon any judgment shall be filed in the office of the clerk of the court in which the judgment is obtained, or with the probate judge or justice of the peace rendering judgment, within three days after final judgment shall have been entered, and it is hereby made the duty of the clerk of the court, probate judge, or justice of the peace, with whom such notice shall be filed, to endorse on such notice the date of filing and to file the same with the papers pertaining to the cause. And, in case notice of lien shall not be filed as aforesaid, the lien shall not attach to such judgment.

ARTICLE II.

DISTRICT ATTORNEYS.

Sec. 55. A district attorney for each organized district.
Sec. 56. To execute and file bond.
Sec. 57. To prosecute in behalf of the people; sign all indictments.
Sec. 58. To give opinions to officers and collect recognizances.
Sec. 59. Deputy district attorneys.

SEC. 55. There shall be elected, at the next general election, and every two years thereafter, a district attorney for each of the organized judicial districts, as they shall be established at the time of such election. They shall hold their office for the term of two years, and until their successors are elected or appointed by law.

NOTE.—Act of April 28th, 1873.

SEC. 56. They shall each, before entering upon the duties of their offices, execute and file with the judge of their respective districts a bond, to be approved by said judge, with one or more sureties, in the sum of five thousand dollars, conditioned that they will well and truly pay over all moneys collected by them as such district attorneys, and for the faithful performance of their duties; which bond shall be forwarded by said judge, and filed in the office of the secretary of the Territory.

SEC. 57. They shall be public prosecutors in their respective districts, and shall sign all bills of indictment that may be found by the grand jury, and prosecute and defend on behalf of the people all public prosecutions and civil suits arising in their districts before the supreme and district courts, wherein the people of this Territory are a party.

SEC. 58. They shall, when required by any member of the grand jury, give their opinion to them on any matter of law pertaining to their duties as grand jurors, and shall be the legal advisers of Territorial, county, and township officers, and shall, when requested by any Territorial, county, or township officer, give to them their opinion on any matter of law pertaining to their duties, without fee or reward. They shall also prosecute on behalf of the people all forfeited recognizances, and shall receive ten per centum of all moneys collected, and ten per cent. on all forfeited bonds and recognizances and undertakings wherein the people are a party, or necessarily involved in the action.

Sec. 59. The district attorneys of the several judicial districts of this Territory are hereby authorized to appoint deputy prosecuting attorneys in each county of their respective districts, whose duty it shall be to prosecute all preliminary examinations in criminal cases, misdemeanors in said counties, and shall receive such fees as are allowed by law for such services; but in all cases where the prosecuting attorney of the district can do so it shall be his duty to be present in person at the final trial in court.

Note.—Sections 56 to 59, both inclusive, are from Act of January 12th, 1872.

CHAPTER IV.

AUDITOR AND TREASURER.

ARTICLE I.

TERRITORIAL AUDITOR AND TREASURER.

Sec. 60. *Auditor to issue no warrants without express authority.*
Sec. 61. *Auditor to keep record of warrants and report to the legislature.*
Sec. 62. *To furnish collectors of counties with blanks.*
Sec. 63. *Auditor to prosecute all delinquent collectors or debtors.*
Sec. 64. *To audit all claims against treasury.*
Sec. 65. *To be custodian of books, records, and property of the Territory.*
Sec. 66. *To furnish the governor with information regarding revenue.*
Sec. 67. *Shall report to the legislature state of revenue and income; guilty of misdemeanor for not reporting.*
Sec. 68. *Auditor and treasurer to perform all duties required by law; auditor to state amount against delinquents and keep office open to governor and legislature.*
Sec. 69. *Keep office at the capital.*
Sec. 70. *Auditor shall make quarterly report of expenses.*
Sec. 71. *Auditor to receive salary.*
Sec. 72. *Treasurer to pay warrants on order presented and render quarterly accounts.*
Sec. 73. *List of warrants ready for payment to be posted on door of office.*
Sec. 74. *Treasurer to keep office at seat of government and open to governor and legislature.*
Sec. 75. *To make quarterly reports.*
Sec. 76. *To give receipts for money paid in.*
Sec. 77. *Salary of treasurer.*
Sec. 78. *Auditor and treasurer to have access to each other's offices.*
Sec. 79. *Authority to administer oaths by auditor and treasurer.*
Sec. 80. *Auditor to give bond; approval of same.*

Sec. 81. Treasurer to give bond; approval of same.
Sec. 82. Auditor, treasurer, and superintendent of public instruction to report to governor.
Sec. 83. End of fiscal year.

Sec. 60. That the auditor of the Territory shall issue no warrants drawn upon the Territorial treasurer in favor of any person, without express authority of law, and then shall specify the name of the party, the service performed for which the same is issued, with the amount and number of the warrant.

Sec. 61. The auditor shall keep a record of all warrants issued by him, and shall report to the legislative assembly of the Territory, at the commencement of each session thereof, the number and amount of warrants issued by him, and under what law the same have been issued.

Sec. 62. The Territorial auditor shall furnish the collector of each county or district with blank licenses and receipts for money collected or to be collected, subscribed by bimself, taking the collector's receipt of the counties for the same.

Sec. 63. He shall direct prosecution in the name of the Territory against all delinquent collectors of the Territorial revenue, and against all debtors of the Territory, or persons being in possession of the public funds, money, or property, who may neglect or refuse to pay or deliver the same to the proper officer.

Sec. 64. He shall audit all claims against the treasury, and when the law recognizes a claim, but no appropriation has been made therefor, shall settle the claim and give the claimant a certificate thereof, and report the same to the legislative assembly.

Sec. 65. He shall be the custodian of, and shall keep all books, papers, records, documents, vouchers, and all conveyances, leases, mortgages, bonds, and other securities appertaining to the fiscal affairs and property of the Territory, which are not required by law to be kept in some other office; and to have charge of all other property of the Territory where no other provision is made by law for its custody.

Sec. 66. He shall furnish to the governor, on his requisition, information in writing upon any subject connected with his office, and suggest to the governor, or to the legislative assembly, plans for improvement and management of the public revenue and property.

Sec. 67. He shall report to the legislative assembly, at its regular sessions in this Territory, and at such other times as it may require, a complete statement of the revenue, funds, income, taxable property, and other resources of the Territory, and of the property of the Territory known to his office; and of the public revenue and expenditures of the Territory since his last report, up to the Monday immediately preceding each regular session, with a detailed estimate of the expenditures to be defrayed by the treasury for the ensuing year, specifying each object of expenditure, and distinguishing between such as are provided for by appropriations, and such as are by law required to be provided for, and the amount of probable deficiency of any former appropriations. He shall make a full detailed statement of all expenditures, claims, and demands by him audited and allowed; and shall, in his report, give separately the items and claims of each and all persons in whose favor he has audited any demand, and under what law allowed, and the date of the allowance. In case any auditor or treasurer shall fail or refuse to make his settlement or statement at the time and in the manner required in this act, he shall be deemed guilty of a misdemeanor; and if he shall still refuse to settle, upon being requested by the legislative assembly, it shall be the duty of the president of the council to issue his warrant for the apprehension of such auditor or treasurer, and cause them or either of them to be brought before the council to show cause why he refuses to comply; and the president, if proper cause is not shown, may commit him or them to the Territorial prison until he or they shall make such settlement.

SEC. 68. The auditor and treasurer shall perform all other duties which may, from time to time, be required of them by law, and if any officer who is accountable to the treasurer in respect to any money or property neglects to render his accounts to the auditor within the time prescribed by law, or if no such time be prescribed by law, then within twenty days after he be required so to do by the auditor, the auditor shall state an account against him from the books of the auditor's office, charging ten per cent. damages on the whole sum appearing due, and interest at the rate of ten per cent. per annum on the aggregate from the time when the account should have been rendered; all of which shall be recovered by an action brought on such account stated, or on the official bond of the officer. If any such officer fails to pay into the treasury the amount received by him within the time prescribed by law, or, having settled an account with the auditor, fails to pay the amount due from him, the auditor shall charge him twenty per cent. damages on the amount due, with interest on the aggregate, from the time the first sum was payable, at the rate of ten per cent. per annum; and the whole may be recovered by an action brought on either such account stated, or on the official bond of the officer; and he shall forfeit his commission; the penal provisions in this being subject to any legal defence which the officer may have against the account as stated by the auditor; but judgment for costs shall be rendered against the officer in the action, whatever be its result, unless he rendered an account within the time mentioned in this section. In those cases where the auditor is authorized to call upon persons or officers for information or statements, or to render accounts, he may issue his requisition therefor to the person or officer called upon, allowing reasonable time, which being served as a notice in a civil action by the sheriff or any constable of the county in which the person or officer called upon resides or exercises his office; and the sheriff or constable shall return the notice to the auditor with the service endorsed thereon, which shall be evidence of the making of the requisition therein expressed. All things pertaining to the auditor's office are at all times open to the inspection of the governor and members of the legislative assembly of the Territory of Montana; and to any committee appointed by either house of the legislative assembly appointed to examine the same.

SEC. 69. The auditor shall keep his office at the seat of government, and shall furnish his office with all needful blanks, maps, books, stationery, fuel, and cases for books, etc.

SEC. 70. The auditor shall make a quarterly report of the expenses of his office, specifying each item and to whom paid.

NOTE.—Sections 60 to 69, both inclusive, are from Act January 12th, 1872.

SEC. 71. That the Territorial auditor shall receive a salary of fifteen hundred dollars a year, to be paid in the same manner as the treasurer is paid.

NOTE.—Act February 13th, 1874.

SEC. 72. It shall be the duty of the Territorial treasurer to keep a book in which he shall enter all Territorial warrants presented for payment, which shall bear date subsequent to the thirty-first day of October, A. D. 1867, giving the name of the owner, the number and amount of the warrants; and they shall be paid in the order in which they are presented; and to keep a true account of all money received, and the disbursements thereof. He shall render his accounts to the auditor for settlement quarterly, or oftener, if required; and he shall also report to the legislative assembly, at the commencement of each regular session, the condition of the treasury, and its condition for the preceding year.

SEC. 73. The treasurer shall quarterly post upon the door of his office, and publish in some newspaper published at the seat of government, a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the last quarter; and from the date of such notice the interest on all such warrants thus posted shall cease; but the treasurer shall hold in readiness such moneys to pay such warrants upon presentation.

SEC. 74. The treasurer shall keep his office at the seat of government, which shall be furnished at the expense of the Territory with all needful maps, books, blanks, cases for books, stationery, fuel, etc., necessary; and his books shall be open at all times for the inspection of the governor, the members of the legislative assembly, and to any committee appointed to examine them by either house thereof.

SEC. 75. The treasurer shall make a quarterly report to the auditor of the expense of his office, specifying each item and to whom paid.

SEC. 76. When any amount is paid into the treasury, the treasurer is required to give the person paying duplicate receipts, stating the funds to which the money belongs, one of which may be kept by him and the other must be delivered to the auditor, in order to obtain proper credit; and the amount shall be charged to the treasurer.

NOTE.—Sections 14 to 18, both inclusive, are from Act January 12th, 1872.

SEC. 77. That the Territorial treasurer shall receive a salary of fifteen hundred dollars a year, which shall be paid quarterly, out of the Territorial treasury, by warrant on the general fund.

NOTE.—Act February 13th, 1874.

SEC. 78. The auditor and treasurer shall have full access to each other's office for the inspection of all books, papers, and accounts thereof; and to all other offices of the Territory for the inspection of all such books as concern their duties.

SEC. 79. They are authorized to administer oaths or affirmations, compelling the attendance of witnesses as in courts of record, in all cases touching the duties of their offices respectively.

SEC. 80. The auditor shall be required to give a bond with two or more sufficient sureties, in the sum of ten thousand dollars, to be approved by the secretary or acting secretary of the Territory, before entering upon the duties of his office; and whenever the secretary shall deem his bond insufficient thereafter, the secretary shall require, and it shall be the duty of the auditor to file one sufficient according to law.

SEC. 81. The treasurer shall be required to give a bond with two or more sufficient sureties, in the sum of twenty-five thousand dollars, to be approved by the secretary or acting secretary of the Territory, which bond may be increased from time to time, or new or additional sureties may at any time be required by the secretary or acting secretary of the Territory, or by the legislative assembly thereof.

SEC. 82. That the Territorial auditor, treasurer, and superintendent of public instruction, are hereby authorized and empowered to report to the governor at the expiration of their term of office in eighteen hundred and sixty-nine, and the governor is hereby authorized to examine and settle their respective accounts, and cause to be published a full statement of said accounts in some newspaper published at the capital, and transmit a copy of said report to the legislative assembly.

SEC. 83. That the first day of December in each and every year shall be the end of the fiscal year for Territorial purposes.

NOTE.—Sections 78 to 83, inclusive, are from Act January 12th, 1872.

ARTICLE II.

TREASURERS, TERRITORIAL AND COUNTY.

Sec. 84. *Examination of county treasurer's books.*
Sec. 85. *Governor to examine books of Territorial treasurer.*
Sec. 86. *Secretary to file and preserve reports of governor.*
Sec. 87. *Removal of Territorial treasurer and new appointment.*
Sec. 88. *County commissioners to remove county treasurer and appoint new one.*
Sec. 89. *Quarterly settlement of county treasurer.*
Sec. 90. *Clerk to make certified statement of settlement.*
Sec. 91. *Penalty if treasurer refuse to comply.*
Sec. 92. *Treasurer to make oath that money belongs to county.*

SEC. 84. It shall be the duty of the county commissioners of the several counties of this Territory, at any of their regular meetings, or at such other times as they may select, and not less than twice in each year, to examine the books of the treasurers of their respective counties, and to count the moneys in their possession as such treasurers; and for this purpose, it is hereby made the duty of such treasurers in the several counties, whenever thereto requested by the said county commissioners of their counties, or any two of them, to deliver forthwith to said county commissioners said books, and all of them, and to permit an inspection and count of the funds in their hands, and all of them; and if the said books and moneys shall be found by them to be correct, they shall certify the same over their signatures, and the county clerk shall enter the same in the records of the proceedings of the board of county commissioners.

SEC. 85. The governor shall have power, and it is hereby made his duty, to examine the books of the Territorial treasurer as often as twice in each year, and at such times as he may select, and to count the funds in the hands of such treasurer; and he shall also examine the books of the Territorial auditor; and he shall make a report of the result of such examination in writing, and file the same with the secretary of the Territory.

SEC. 86. It shall be the duty of the secretary of the Territory to file and preserve the reports of the governor herein provided for.

SEC. 87. If, at any time, upon the examination of the Territorial treasury, it shall appear to the governor that the books of the Territorial treasurer do not correspond with the amount of funds on hand, or that the said books do not show the actual condition of said office and the funds on hand; or it shall appear to him that any funds of the Territory have been embezzled or diverted from their proper channel, or in any way or manner expended or taken from the treasury without authority of law; or that there is or has been any culpable negligence by said treasurer in the keeping of said books, or the care or keeping of said public moneys, he is hereby empowered, and it is hereby made his duty, forthwith to take possession of the books, moneys, papers, and other property, of every kind and description, belonging to the Territory, or which came to the treasurer's possession by virtue of his said office, and to remove the said treasurer and appoint another in his place, who shall give bonds to the approval of the said governor, and take the oath prescribed by law; which oath shall be taken before some justice of the supreme court, or, in the absence of the said justice, before a probate judge, which oath and bond shall be filed with, and recorded by, the secretary of the Territory, and thereupon the governor shall turn over to such treasurer the books, moneys, papers, and other property, and take his receipt therefor; and the governor shall make report of his said doings to the succeeding legislative assembly, and the said treasurer shall hold his office until the close of the next legislative assembly.

SEC. 88. If, at any time, upon the examination of the county treasuries herein provided for, it shall appear to the county commissioners that the books of the county treasurers do not correspond with the amount of funds on hand, or that the said books do not show the actual condition of said office and the funds on hand; or if it shall appear to them that any funds of the county have been embezzled or diverted from their proper channel, or in any way or manner expended or taken from the treasury without authority of law; or that there is or has been any culpable negligence by said treasurer in the keeping of said books, or the care or keeping of the said public moneys, they are hereby empowered, and it is hereby made their duty to forthwith take possession of the books, moneys, and papers, and other property of every kind and description belonging to the county, or which came to the possession of said treasurer by virtue of his said office, and appoint another in his place, who shall give bonds to the approval of said county commissioners, and take the oath prescribed by law, which oath shall be taken before an officer authorized by law to administer oaths; which oath and bond shall be filed with the clerk of the board of county commissioners, and thereupon the commissioners shall turn over to such treasurer the books, moneys, papers, and other property, and take his receipt therefor, and the said treasurer shall hold his office until his successor shall be elected and qualified.

SEC. 89. That each county treasurer shall, at the expiration of each and every quarter, make a settlement with the board of county commissioners of their respective counties, and shall make a quarterly report of all money collected for county and Territorial purposes, and shall forthwith transmit such report, together with the amount due the Territory, to the Territorial treasurer.

SEC. 90. The chairman of the board of county commissioners shall make, or cause to be made by the clerk of the board, a certified statement of each and every quarterly, annual, or final settlement had with said county treasurer, showing the amount collected by said treasurer for Territorial purposes; and before the board shall adjourn they shall cause said certified statement to be transmitted to the Territorial auditor.

SEC. 91. If any Territorial or county treasurer shall refuse to comply with the demand of the officer or officers hereby empowered to examine their books, moneys, and papers, or shall willfully seek or endeavor, for any period of time whatever, to delay such delivery or examination, or shall refuse to comply with the demand of the governor herein provided for, or the demand of the county commissioners herein provided for, to deliver up any books, moneys, papers, or other property belonging to their respective offices, upon receiving notice of their removal, he shall be deemed guilty of a felony, and, being thereof convicted, shall be punished by imprisonment in the Territorial prison for a period not less than six months nor exceeding five years.

SEC. 92. That for the purpose of more fully making such examination, such commissioners shall cause said treasurer to make oath before some person authorized to administer oaths, that the money he represents to said commissioners, belongs to the county, and shall also cause a similar oath to be administered to the person or managers of corporations with whom such moneys may be deposited.

NOTE.—Act February 15th, 1877.

CHAPTER V.

BASTARDS.

Sec. 93. *Arrest and examination of father of bastard and security for support of child.*
Sec. 94. *Upon failure of the mother, commissioners may sue.*
Sec. 95. *In case of non-compliance, accused to be bound over.*
Sec. 96. *When mother unable to attend, bond renewed conditioned for appearance at next term.*
Sec. 97. *Trial by jury and competency of witnesses.*
Sec. 98. *Putative father to maintain child or be committed.*

SEC. 93. That on complaint to any justice of the peace, in this Territory, by any unmarried woman, resident herein, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which, if born alive, may be a bastard, accusing on oath or affirmation any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his warrant directed to the sheriff or constable of any county in this Territory, commanding him forthwith to bring such accused person before said justice, to answer such complaint; and on return of such warrant, the justice, in the presence of the accused person, shall examine the complainant under oath respecting the cause of her complaint, and such accused person shall be allowed to ask the complainant, when under oath, any question that he may think necessary for his justification; all of which questions and answers, together with every other part of the examination, shall be reduced to writing by the justice of the peace; and if on such examination, the party accused shall pay, or secure to be paid to the complainant such sum or sums of money, or property, as she may agree to receive in full satisfaction, and shall further give bond to the board of county commissioners of the county in which said complainant shall reside, and their successors in office, conditioned to save such county free from all charges towards the maintenance of such child, then and in that case the justice shall discharge the party accused out of custody, on his paying the costs of the prosecution: *Provided*, That the agreement aforesaid shall be made or acknowledged by both parties in the presence of the justice, who shall thereupon enter a memorandum of the same upon his docket.

SEC. 94. That when any woman has a bastard child, and neglects to bring a suit for its maintenance, or commence a suit and fail to prosecute to final judgment, the county commissioners, in any county interested in the support of any such bastard child when sufficient security is not offered to save the county from expense, may bring a suit in behalf of the county, against him who is accused of begetting such child, or may take up and prosecute a suit begun by the mother of the child.

SEC. 95. That in case such accused person does not comply with the provisions contained in section 93 of this chapter, the justice to whom such complaint was made, shall bind such person in a recognizance to appear at the next sitting of the district court of the district in which said county is situated, with sufficient security in a sum not less than five hundred dollars, nor more than one thousand dollars, for the benefit of the county in which such child shall be born, to answer to such accusation and to abide the order of the court thereon, and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer such complaint.

SEC. 96. That if, at the time of such court, the woman be not delivered or unable to attend, the court shall order the renewal of the bonds of recognizance that the accused person shall be forthcoming at the next sitting of the said court after the birth of the child, at which the mother of said child shall be able to attend, and the continuance of such bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

SEC. 97. That when such accused person shall plead not guilty to such charge before the court to which he is recognized, the court shall order the issue to be tried by a jury, and at the trial of such issue the examination before the justice shall be given in evidence, and the mother of the bastard child shall be admitted as a competent witness, and the credibility be left to the jury: *Provided, always,* That no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime which would by law disqualify her from being a witness in any other case, and on the trial of the issue the jury shall, in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child, also any variation in her testimony before the justice and before the jury, and also any other confession of her, at any time, which does not agree with her testimony, or any other proofs or pleas made and produced on behalf of such accused person.

SEC. 98. That in case the jury find the defendant guilty, or such accused person before the trial shall confess in court that the accusation is true, he shall be judged the reputed father of such child, and shall stand charged with the maintenance thereof, in such a sum or sums as the court may order and direct, with payment of costs of prosecution; and the court shall require the reputed father to give security to perform the aforesaid order, and in case the reputed father shall neglect or refuse to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the county there to remain until he shall comply with the order of the court: *Provided,* That such putative father confined in prison for not complying with the sentence and order of the court, as in this section provided, shall be entitled to the benefit of the prison rules, and of sections 389 and 390 of the "Criminal Practice Act," as to the same with which he is charged, and the costs.

NOTE.—Act of February 13th, 1874.

CHAPTER VI.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

Sec. 99. *Inland bills and notes declared negotiable.*
Sec. 100. *Days of grace.*
Sec. 101. *Bills and notes falling due on certain days; payable when.*
Sec. 102. *Drawers of endorsed bills, when liable.*
Sec. 103. *Endorsers of bills and notes contingently liable only.*
Sec. 104. *Presentment and protest necessary to hold endorsers.*
Sec. 105. *Holders of over-due bills and notes may sue all parties thereto; transfer to party tendering payment.*

SEC. 99. Inland and foreign bills of exchange and promissory notes are hereby declared to be negotiable obligations in this Territory, and collectable by, and in the name of, the holders and owners thereof.

SEC. 100. Three days of grace shall be deemed and taken to apply to all bills of exchange and promissory notes maturing within this Territory; so that they shall not be deemed to fall due until the third day from and after the day of maturity expressed therein. But this provision shall not extend to drafts payable at sight, nor to checks for funds deposited in bank, or elsewhere, subject to draft at sight.

Sec. 101. Bills of exchange and promissory notes falling due on Sunday, the fourth day of July, Christmas, or any day set apart by the President of the United States, or the governor of this Territory, as a day of public fasting or thinksgiving, shall be deemed to fall due the previous day, and may be prosecuted and protested accordingly.

Sec. 102. Drawers of endorsed bills of exchange shall be primarily liable to the holders thereof, until the same shall be accepted, after which they shall be deemed only liable secondarily thereon. Endorsers for the drawers of such bills, shall be liable as between the parties thereto, only for the default of the drawers, in the order of their endorsements thereon.

Sec. 103. Endorsers of bills of exchange and promissory notes shall be contingently liable, only until after they shall have been notified of the presentation and non-payment thereof, at maturity, by the person or persons primarily liable for their payment.

Sec. 104. In order to make the contingent liability of any endorser of any bill of exchange or promissory note absolute, it shall be necessary for the holders of the paper to cause it to be presented at the place where, by its terms, it is payable, if any place of payment be therein or thereon specified, and, if no place of payment be specified, then to the person himself who is primarily liable for the payment; and if payment thereof, on such presentation at maturity, be neglected or refused, to cause a written or printed or partly written and partly printed notice of such presentation, demand, and non-payment, briefly describing the bill or note, to be served immediately thereafter upon the endorser, unless the same shall be protested in the usual manner by a notary public; in which case the official certificate of protest of such officer, made on the day of protest, enclosed in letter form, and deposited, post-paid, in the post office, directed to such endorser at his usual place of residence, will charge him in the same manner.

Sec. 105. A holder of over-due bills of exchange and promissory notes may sue all the parties thereto collectively or severally, at his option, but if any of the parties thereto, who are not primarily liable for the payment, shall tender him the amount of principal, interest and costs thereon, he shall transfer the paper; and if a judgment be rendered thereon, he shall assign the judgment to such party so making the tender; and in case of refusal, he may be compelled to do so by summary proceedings, for that purpose instituted, in the district court of the district in which he shall reside.

Note.—Act January 12th, 1872.

CHAPTER VII.

BRANDS AND MARKS.

ARTICLE I.

CATTLE BRANDS AND MARKS.

Sec. 106. *Territorial treasurer to be recorder.*
Sec. 107. *County clerk to keep auxiliary office.*
Sec. 108. *Duty of recorder and of applicant for a brand.*
Sec. 109. *To keep record in a book; to be open to inspection.*

Sec. 110. *List to be published; fees of recorder.*
Sec. 111. *Duties of clerks of auxiliary offices.*
Sec. 112. *Penalty for using like brand of another.*
Sec. 113. *Vendor of stock to vent his brand.*

Sec. 106. That a general office for recording brands, or marks and brands, shall be kept at the seat of government, and the duties are hereby devolved on the Territorial treasurer, without further compensation than is now provided by law for such treasurer.

Note.—Act February 8th, 1877.

Sec. 107. There shall also be an auxiliary office in every county other than that in which the general office is located; and the duties thereof are hereby devolved on the county clerks respectively.

Sec. 108. Whenever any person wishes to obtain a recorded brand, or mark and brand, application may be made to the general recorder directly, or through the auxiliary office of the county in which the applicant resides; and it shall be the duty of the general recorder to designate the particular brand, or mark and brand, to be used by such applicant, and define the place and position it shall occupy on the animal; consulting always the choice or convenience of applicants, so far as may be, without interfering with previously recorded brands, or marks and brands.

Sec. 109. The general recorder shall keep a record of all brands, or marks and brands, with the name and residence of the persons owning the same, in a book suitable for the purpose, which shall be free to the inspection of all persons interested; and he shall furnish to the owners certified copies of all brands, or marks and brands, which certificates shall be deemed evidence in law.

Note.—Act January 10th, 1872.

Sec. 110. The general recorder of brands and marks shall annually have published, as an appendix to his report as Territorial treasurer, a list of all brands, or marks and brands, which have not been previously published, and cause to be printed, at the expense of the Territory, a sufficient number of copies in pamphlet form to furnish each county clerk with twenty-five copies thereof, for free distribution to those engaged in stock-growing. The general recorder may charge and receive, from each person applying for a brand, or mark and brand, a fee of one dollar for each brand, or mark and brand, so recorded, and all fees received by him shall be paid into the Territorial treasury, to the credit of the general fund. The clerk of the supreme court shall, immediately after the approval of this act, deliver to the Territorial treasurer all books and papers belonging to said office of general recorder of brands and marks.

Note.—Act Februry 8th, 1877.

Sec. 111. Clerks of auxiliary offices shall receive and forward to the general recorder all applications for recording brands, or marks and brands, and shall furnish each applicant the recorder's certificate of the brand, or mark and brand, designated and recorded for him, for which service he may receive fifty cents each, in addition to the recorder's fee.

SEC. 112. Any person using a like brand, in the position or place recorded by another, shall be deemed guilty of a misdemeanor, and shall be liable to a fine, in any sum not less than one hundred dollars for each offence.

SEC. 113. It shall be, and it is hereby made the duty, of any and all persons who sell stock of any kind to another party to "vent" their brand on the part of the animal which the purchaser or purchasers may determine: *Provided,* That said "vent" brand shall be upon the same side of the animal as the original brand, either by inverting the original brand or by a "vent" brand prepared for the purpose; said "vent" brand may be, at least, one-half the size of the original; and said "vent" brand shall be of the type of the original brand; and the venting of such original brand shall be *prima facie* evidence of sale or transfer of said animal or animals.

NOTE.—Act January 10th, 1872.

ARTICLE II.

TRADE MARKS AND BRANDS.

Sec. 114. *Applicant for, to deliver recorder fac simile or description.*
Sec. 115. *Recorder to record same; exclusive right to.*
Sec. 116. *Penalty for using brand or mark of another person.*
Sec. 117. *Deceitfully using second-hand package with another's brand on it.*
Sec. 118. *Fee of recorder.*
Sec. 119. *Not to affect power of court or to prevent sale of brand.*
Sec. 120. *Limit to time in which to record.*
Sec. 121. *Fines to go to school fund.*

SEC. 114. That any person, partnership, firm, or private corporation, desiring to secure within this Territory the exclusive use of any name, mark, brand, print, designation, or description, for any article of manufacture or trade, or for any mill, hotel, factory, machine shop, or other business, shall deliver to the Recorder of Brands for the Territory of Montana, or cause to be delivered to him, a particular description or *fac simile* of such brand, mark, name, print, designation, or description, as he may desire to use.

SEC. 115. If there be not already a claim filed with the recorder of brands for the same or a similar name, mark, brand, print, designation, or description, he shall immediately record the one furnished, in a book, to be specially provided and kept by him for that purpose, which book shall be at all times subject to public inspection and examination. And after the said record, the person or persons causing the same to have been recorded shall have the exclusive right to use the said name, mark, print, brand, designation, or description. That the exclusive right herein granted shall only authorize the record of a mark, brand, or particular device, and shall not authorize the exclusive use of figures, letters, or roman numerals. If there be already filed the same or a similar brand, mark, name, print, designation or description, the recorder of brands shall so inform the applicant without delay, and shall not record the same.

SEC. 116. If any person, partnership, firm, or corporation that shall use or cause to be used any brand, mark, name, print, designation, or description, the same as, or similar to, one so secured or recorded, for the purpose of deception or profit, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars, and not more than one thousand dollars.

SEC. 117. Any person, partnership, firm, or private corporation, that shall use or cause to be used any second-hand sack, box, barrel, can, package, or other article on which has been placed any name, brand, mark, print, designation, or description, the property of another, for the purpose of deception, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars.

SEC. 118. The fee of the recorder of brands, shall be one dollar for recording each brand, mark, name, print, designation or description.

SEC. 119. Nothing in this article shall be so construed as to affect the power of courts of equity to perpetually restrain, by injunction or otherwise, the improper use of any mark, brand, name, print, designation or description, or to prevent the sale or transfer of such mark, brand, name, print, designation, or description, with the right to use the same.

SEC. 120. Persons now using brands, or marks for any of the purposes aforesaid, shall have until July 1st, 1874, in which to file their claim thereto, before which date no claim to a new brand or mark shall be filed.

SEC. 121. That all fines arising under the provisions of this article shall be paid into the county treasury of the county where the offence was committed, for the benefit of the school fund.

NOTE.—Act February 2d, 1874, took effect July 1st, 1874.

ARTICLE III.

PUBLICATION OF BRANDS, AND DISTRIBUTION OF PRINTED COPIES.

Sec. 122. *Treasurer to print 1,000 copies.*
Sec. 123. *To furnish county clerks, and to sell at one dollar per copy.*
Sec. 124. *Providing for payment for printing.*
Sec. 125. *Appropriation for engraving.*
Sec. 126. *Recorder not to record two like brands for same place on animal.*

SEC. 122. After the first day of April, A. D. 1879, it shall be the duty of the Territorial treasurer to cause to be printed at the expense of the Territory, one thousand copies of a complete list of all marks and brands of record in his office, arranged in alphabetical order, in pamphlet form, which may be on file in his office on the said first day of April, A. D. 1879.

SEC. 123. The treasurer, so soon as the said pamphlets shall be printed, shall furnish the county clerks of each county with fifty copies of the same. The county clerks shall receive said copies, and sell the same to any person applying therefor at the rate of one dollar per copy, and account to, and pay over to, the said treasurer, every three months, for the money received therefor. When any county clerk shall have sold and accounted for the first fifty copies furnished, he may apply to, and receive from the treasurer an additional fifty copies, until the whole of the one thousand copies are exhausted.

SEC. 124. The auditor shall draw his warrant upon the treasurer for the amount of the expenditure incurred by the printing, as herein provided for, upon receiving a bill from the party performing the work, duly certified as correct by the governor.

SEC. 125. The treasurer is hereby authorized to expend the sum of sixty dollars, or so much thereof as may be necessary, in procuring engraved copies of the brands placed on record, for publication, and said copies shall remain the property of the Territory, to be used in printing said marks and brands, and the auditor is authorized to issue his warrant for the amount so expended, not to exceed the sum of sixty dollars.

SEC. 126. The recorder of marks and brands shall not record any two like brands, if upon the same place on the animal.

NOTE.—Act February 21st, 1879.

ARTICLE IV.

TO COMPEL BUTCHERS TO RECORD BRANDS.

Sec. 127. *Butchers to keep record of brands of slaughtered cattle, etc.*
Sec. 128. *To file one copy each in offices of justice of the peace and county clerk.*
Sec. 129. *Penalty for violation of these provisions.*

SEC. 127. From and after the passage of this article, it shall be the duty of all butchers slaughtering cattle in this Territory to keep a true and correct record of all marks and brands of all cattle slaughtered by them, recording also the name or names of persons from whom the said cattle were bought, together with their residence and date of purchase and delivery of said cattle. The said record shall be kept in a suitable book; in the said butcher's place of business, subject at all times to the inspection of the public.

SEC. 128. It shall be the duty of all butchers keeping a record as provided in section one hundred and twenty-seven of this article, to make, or cause to be made, on or before the first day of each month, two exact and correct copies of the said record, as kept by him or them, and shall be and appear before the nearest acting justice of the peace or probate judge, as the case may be, within the county in which said butcher carries on and conducts his business, and shall make affidavit to the correctness of the said record, one copy of which shall be placed on file in the office of the nearest justice of the peace, and the other copy shall be sent by the said butcher to the county clerk in said county, and placed on file by the said clerk, and be subject, as other papers in his office, to the inspection of the public.

SEC. 129. Any person who shall violate any of the provisions of this article, or shall fail, neglect, or refuse to comply with the requirements thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof, in a court of competent jurisdiction, shall be punished by fine of not less than one hundred dollars and not exceeding five hundred dollars, or by imprisonment in the county jail not less than three months, and not exceeding six months, at the discretion of the court. All money collected by virtue of the provisions of this article shall be paid into the general fund of the county for the benefit of the public schools in said county.

NOTE.—Act of February 20th, 1879.

CHAPTER VIII.

CLERKS OF COURTS.

ARTICLE I.

BONDS OF CLERKS.

Sec. 130. *Clerks of district and probate courts to give bonds.*
Sec. 131. *Bonds may be sued on in the name of the Territory.*

SEC. 130. The clerks of the Territorial district courts, and persons acting as clerks of the probate courts of this Territory, are hereby required to execute a bond to the people of the Territory of Montana, in the penal sum of five thousand dollars, and an additional amount, if required by the judges of the respective courts, to be approved by the judges of their respective districts, conditioned for the faithful performance of their duties as clerks of said courts, and that they will punctually pay over to the person legally authorized to receive the same, all money that may come into their hands by virtue of said office. The said bond shall be filed in the office of the county clerk,

SEC. 131. The bond so executed by said clerks may be sued upon in the name of the Territory of Montana, in any court of competent jurisdiction, to the use of any person or persons'aggrieved by any breach of the same.

NOTE.—Act of January 12th, 1872.

ARTICLE II.

DEPUTY CLERKS OF THE DISTRICT COURTS.

Sec. 132. *Appointment and qualification of deputy clerk.*
Sec. 133. *Official oath of deputy.*
Sec. 134. *Duty of clerk to appoint a deputy for each county.*
Sec. 135. *Deputy to keep records at the county seat.*
Sec. 136. *Penalty for refusal to appoint deputy.*

SEC. 132. That the clerks of the district courts of the several counties within this Territory may, with the approval of the judge of the district court, within their several judicial districts, appoint one or more deputies, which shall be evidenced by a certificate thereof, signed by such clerk and approved by said judge, and entered upon the journals of their respective courts, which deputy shall continue during the pleasure of the principal, and every principal may take such bond and security from his deputy as he may deem necessary to secure the discharge of his duties; and the principal shall in all cases be answerable and liable for the neglect, default or misconduct in the office of his deputy.

SEC. 133. That every such deputy shall, previous to entering upon the duties of his appointment, take an oath faithfully to perform all the duties thereof, which oath shall be entered on the journal of said court, and when so qualified, said deputy may do and perform all the duties appertaining to the office of his principal.

NOTE.—Act of February 4th, 1874.

SEC. 134. It is hereby made the duty of the clerk of each judicial district of this Territory to appoint a deputy clerk for each county of such judicial district, where courts are held outside of the county in which such clerk may reside, which deputy shall qualify and give bonds as now provided by law.

SEC. 135. It shall be the duty of each deputy clerk of the district court to keep a full and complete record of the proceedings of such district court, in an office to be provided by the county commissioners, at the county seat of the county where such court may be held, in the form and manner provided by law for the keeping of such records and proceedings, which records and all other books and papers required by law to be kept in the office of the clerk of the district court, shall be open for the examination of any person during the usual business hours of each day, Sundays and legal holidays excepted.

SEC. 136. Every clerk of the district court in this Territory, who shall fail, or refuse to appoint a deputy clerk for each county, as herein provided, shall be deemed guilty of a misdemeanor, and be fined in any court of competent jurisdiction, in any sum not less than five hundred dollars, nor more than one thousand dollars.

NOTE.—Act of February 19th, 1879.

ARTICLE III.

CLERKS OF PROBATE COURTS.

Sec. 137. *Office of clerk of probate court created.*
Sec. 138. *Appointment of clerk; but judge may act as clerk.*
Sec. 139. *Clerk to give bond.*
Sec. 140. *What fees to receive.*

SEC. 137. That the office of clerk of probate court be, and the same is hereby created and established for each and every probate court in the Territory of Montana.

NOTE.—Act of January 12th, 1872.

SEC. 138. The said probate clerks shall be appointed by their respective judges, to hold their office at the will and pleasure of the probate judge so appointing him: *Provided, however,* That the appointment of [a] clerk shall be optional with the judge in such counties; when the judge does not deem it necessary, he may and he is hereby authorized to act as *ex-officio* clerk, subject to give such additional bond as is required by law.

NOTE.—Act February 13th, 1874.

SEC. 139. The clerk so appointed, or judge acting *ex-officio* clerk of his own court, shall execute and file a bond, with two or more sufficient sureties, in the penal sum of one thousand dollars, payable to the Territory of Montana, conditioned for the faithful performance of his duty, which bond shall be approved by the county commissioners of the respective counties, and filed in the office of the county clerk, prior to his entering upon the discharge of his duties as such probate clerk.

SEC. 140. The clerks of said probate court shall be entitled to such fees as are allowed to probate judges for services, as may be rendered in the capacity of clerk of said probate court.

NOTE.—Act January 12th, 1872.

CHAPTER IX.

COMMISSIONERS OF DEEDS.

Sec. 141. *Governor may appoint.*
Sec. 142. *Oath and fee of commissioner.*
Sec. 143. *Not to affect persons appointed prior.*

SEC. 141. That the governor of this Territory may appoint and commission in any State or Territory of the United States, or Dominion of Canada, one or more commissioners of deeds, to continue in office during the pleasure of the governor, not exceeding the period of five years, who shall have power to administer oaths and take depositions, and the proof and acknowledgment of deeds, and other instruments to be used or recorded in this Territory.

SEC. 142. Before such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath before some officer authorized to administer oaths in the State or Territory for which he is appointed, that he will faithfully discharge the duties of his said appointment, which oath, together with an impression of his seal of office, shall be filed in the office of the governor of this Territory: *Provided,* That no commission shall issue until the applicant pays into the Territorial treasury the sum of three dollars.

SEC. 143. That Chapter XII of an act entitled "An act revising, re-enacting, and codifying the general and permanent laws of Montana Territory," approved January 12th, 1872, be, and the same is hereby repealed; but nothing in this chapter contained shall be so construed as to terminate the office of any commissioner of deeds heretofore appointed by the governor of this Territory, before January 1st, 1878, nor until five years shall have expired after the date of his commission.

NOTE.—Act January 26th, 1877.

CHAPTER X.

COMMON LAW.

Sec. 144. *Common law adopted in this Territory.*

SEC. 144. That the common law of England, so far as the same is applicable and of a general nature, and not in conflict with special enactments of this Territory, shall be the law and the rule of decision, and shall be considered as of full force until repealed by legislative authority.

NOTE.—Act January 12th, 1872.

CHAPTER XI.

CONSTRUCTION OF STATUTES.

Sec. 145. *All words to be construed according to approved and common usage, except technical.*
Sec. 146. *Repealing act, if repealed, not to revive former laws.*
Sec. 147. *All provisions to be liberally construed.*
Sec. 148. *Time not prescribed, to take effect after passage.*
Sec. 149. *Times "heretofore" and "hereafter;" what to mean.*
Sec. 150. *Singular number and masculine gender; what to mean.*
Sec. 151. *Rules of last two sections; when to apply.*
Sec. 152. *Prosecution not to be affected by repeal of law.*
Sec. 153. *What omitted in publishing laws.*

SEC. 145. In the construction of all statutes the following rules shall be observed, unless such construction shall be manifestly inconsistent with the intent of the legislature, or repugnant to the context of the same statute, that is to say:

First. All words and phrases shall be understood and construed according to the approved and common usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning, shall be construed and understood according to such peculiar and appropriate meaning.

Second. Every word imparting the singular number only, may extend and be applied to one person or thing, or to several persons or things, and every word imparting the masculine gender only, may extend and be applied to females as well as males; and when it says executor, it may mean executrix, and when it says administrator, it may mean administratrix.

Third. The words "insane person" shall be construed to include every idiot, *non compos*, lunatic, or distracted person.

Fourth. The word "issue," as applied to descent of estate, shall be construed to include all the lawful lineal descendants of the ancestor.

Fifth. The words "land or lands," and the words "real estate," shall be construed to include lands, tenements and hereditaments, and all rights thereto, and all interests therein.

Sixth. The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year, unless otherwise expressed.

Seventh. The word "oath" shall be construed to include affirmation, and the word "sworn" to include affirmed.

Eighth. The word "person" may extend and be applied to bodies politic and corporate.

Ninth. The words "town or towns" may be construed to include city or cities.

Tenth. The word "will" shall be construed to mean codicil as well as will.

Eleventh. The words "written or writing" may be construed to include printing or engraving: *Provided,* That in all cases where the written signature of any person is required by law, it shall always mean the proper handwriting of such person, or, in case he is unable to write, his proper mark.

Twelfth. The word "State," when applied to different parts of the United States, may be construed to include the District of Columbia and the Territories.

Thirteenth. The term "court" shall, in all necessary cases, be deemed to refer as well to probate judges and justices of the peace as to courts of record.

SEC. 146. No act or part of an act repealed by another act shall be deemed to be revived by the repeal of the repealing act.

SEC. 147. All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the legislative assembly may be fully carried out.

SEC. 148. Every act which does not fully prescribe the time it shall go into operation shall take effect from and after its passage.

SEC. 149. Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect; and whenever the word "hereafter" occurs, it shall be construed to mean the time after the statute containing the term shall take effect.

SEC. 150. When any subject, matter, party, or person, is described or referred to, by words imparting the singular number, or the masculine gender, several matters, and persons and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included.

SEC. 151. The rules prescribed in the last two sections shall apply in all cases, unless it be otherwise especially provided, or unless there be something in the subject or context repugnant to such construction.

SEC. 152. No action, plea, prosecution, civil or criminal, pending at the time any statutory provision shall be repealed, shall be affected by such repeal, but the same shall proceed in all respects as if such statutory provisions had not been repealed, except that all such proceedings had after the taking effect of any statute passed at this session shall be conducted according to the provisions of such statute, and shall be in all respects subject to the provisions thereof, so far as they are applicable.

SEC. 153. In publishing the acts of the legislative assembly, the enacting clause, the signature of the speaker of the house of representatives, the president of the council, and the governor, shall be omitted, but the date of their approval shall be retained.

NOTE.—Act of January 12th, 1872.

CHAPTER XII.

CONTRACTS.

Sec. 154. *Market value of gold dust to be measure of damages in certain actions.*

SEC. 154. That in actions and express contracts for the payment of a certain amount in gold dust, or gold or silver bullion, or for the delivery of a certain amount of gold dust, or gold or silver bullion, the measure of damages shall be the market value of the amount of gold dust, or gold or silver bullion, in United States treasury notes, at the time it should have been delivered or paid, with interest until the time of recovering judgment, at the rate stipulated in the contract.

NOTE.—Act January 12th, 1872.

CHAPTER XIII.

CONVEYANCES AND CONTRACTS.

ARTICLE I.

OF VOID AND FRAUDULENT CONVEYANCES AND CONTRACTS.

Sec. 155. *Every conveyance made with intent to defraud, void.*
Sec. 156. *No conveyance deemed fraudulent in favor of person having legal notice.*
Sec. 157. *Every conveyance containing provision for revocation to be void as against subsequent purchaser.*
Sec. 158. *Power of revocation to other than grantor void.*
Sec. 159. *From what time power of revocation valid.*
Sec. 160. *All conveyances of land to be in writing.*
Sec. 161. *Preceding section not to affect will of testator.*
Sec. 162. *Every contract for sale or lease of lands or interest therein void, unless in writing.*
Sec. 163. *Instrument may be subscribed by agent.*
Sec. 164. *Nothing in this act to abridge power of court.*
Sec. 165. *All deeds and assignments in trust for benefit of party making same void.*
Sec. 166. *What agreements void, unless in writing.*
Sec. 167. *Contract for over two hundred dollars; when void, unless in writing.*
Sec. 168. *What deemed memorandum of sale at auction.*
Sec. 169. *Goods sold and not delivered conclusive evidence of fraud.*
Sec. 170. *What termed creditors.*
Sec. 171. *Every instrument may be subscribed by agent.*
Sec. 172. *Every conveyance or assignment made with intent to defraud creditors, void.*
Sec. 173. *Void against creditors, also against heirs, etc.*
Sec. 174. *Fraudulent intent a question of fact.*
Sec. 175. *Not to affect innocent purchasers without notice.*
Sec. 176. *What terms "estate" and "bonds" to include.*
Sec. 177. *What the term "conveyance" to embrace.*

SEC. 155. Every conveyance of any estate or interest in lands, or the rents and profits of lands, and any charge upon lands, or upon the rents or profits thereof, made or executed with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, as against such purchasers, shall be void.

SEC. 156. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have legal notice thereof at the time of such purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud.

SEC. 157. Every conveyance or charge of or upon any estate or interest in the lands containing any provision for revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from said grantor for a valuable consideration, of any estate or interest so liable to be revoked, determined, or altered, although the same be not directly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

SEC. 158. When a power to revoke a conveyance of lands, or rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, and profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of vacation were recited therein, and to the intent to revoke the former conveyance expressly declared.

SEC. 159. If a conveyance to a purchaser under either of the two last preceding sections shall be made before the person making the same shall be entitled to execute his power of vacation, it shall nevertheless be valid from the time the power of vacation shall actually rest in such person in the same manner and to the same extent as if then made.

SEC. 160. No estate or interest in lands other than for leases for a term not exceeding one year, or any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance, in writing subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

SEC. 161. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor prevent any trust arising or being extinguished by operation of law.

SEC. 162. Every contract for the leasing for a longer term than one year, or for the sale of any lands, or interest in lands, shall be void, unless the contract, or some note or memorandum thereof expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

SEC. 163. Every instrument required to be subscribed by any person mentioned in the last preceding section may be subscribed by the agent of the party lawfully authorized.

SEC. 164. Nothing contained in this act shall be construed to abridge the power of the court to compel the specific performance of such agreements.

SEC. 165. All deeds of gift, all conveyances and transfers, or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

SEC. 166. In the following cases any agreement shall be void unless such agreement, or some note or memorandum thereof expressing the consideration, be in writing, and subscribed by the party charged thereunto:

First. Every agreement that by the terms is not to be performed within one year from the making thereof.

Second. Every special promise to answer for the debt or default or miscarriage of another.

Third. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promise to marry.

SEC. 167. Every contract for the sale of any goods, chattels, or things in action, for the price of two hundred dollars and over, shall be void, unless:

First. A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or,

Second. Unless they shall accept or receive a part of such goods or the evidences or some of them of such in action.

Third. Or unless the buyer shall at the time pay some part of the purchase money.

SEC. 168. Whenever goods shall be sold at auction, and the auctioneer shall at the time of the sale enter in a sale book a memorandum specifying the nature and price of the property sold, the term of sale, the names of the purchasers, and name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

SEC. 169. Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by the immediate delivery, and be followed by an actual and continued change of possession of the thing sold and assigned, shall be conclusive evidence of fraud as against the creditors of the vendor or the person making such assignments, or subsequent purchasers in good faith.

SEC. 170. The term creditors, as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time while such goods and chattels shall remain in his possession or under his control.

SEC. 171. Every instrument of writing required by any of the provisions of this article to be subscribed by any party, may be subscribed by the lawful agent of such party.

SEC. 172. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or in goods in action, or of the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and any bond or other evidences of debt given, suits commenced, decrees or judgment suffered, with the like intent as against the person hindered, delayed, or defrauded, shall be void.

Sec. 173. Every conveyance, charge, instrument, or proceeding, declared to be void by the provisions of this article, as against creditors or purchasers, shall be equally void as against the heirs, successors, and personal representatives or assigns of such creditors or purchasers.

Sec. 174. The question of fraudulent intent in all cases arising under this article shall be deemed a question of fact and not of law, nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers solely on the ground that it was not founded on a valuable consideration.

Sec. 175. The provisions of this article shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

Sec. 176. The term "lands," as used in this article, shall be construed as co-extensive in meaning with land, tenements, hereditament, and possessory land claims to public lands; and the terms "estate" and "interest in lands" shall be construed to embrace every estate and interest, present and future, vested and contingent in lands as above defined.

Sec. 177. The term "conveyance," as used in this article, shall be construed to embrace any instrument in writing except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in land is created, alienated, assigned, or surrendered.

Note.—Act of January 12th, 1872.

ARTICLE II.

CONVEYANCES OF REALTY.

Sec. 178. *How conveyance by deed signed and acknowledged.*
Sec. 179. *Husband and wife may convey by joint deed.*
Sec. 180. *Every conveyance to be proved or acknowledged.*
Sec. 181. *By whom acknowledgment taken.*
Sec. 182. *Officer taking proof or acknowledgment to certify same.*
Sec. 183. *Person must be known to officer.*
Sec. 184. *What certificate shall state.*
Sec. 185. *Form of certificate.*
Sec. 186. *Form when grantor not known.*
Sec. 187. *What proof of execution necessary.*
Sec. 188. *When proof of subscribing witness taken.*
Sec. 189. *When certificate of proof granted.*
Sec. 190. *What certificate is set forth.*
Sec. 191. *When evidence of handwriting taken.*
Sec. 192. *What proof of handwriting necessary.*
Sec. 193. *When officer may issue subpœna for witness.*
Sec. 194. *Person refusing to appear liable for damages.*
Sec. 195. *Certificate entitles deed to be recorded.*
Sec. 196. *How married women may convey estate.*
Sec. 197. *Who may take acknowledgment of married women.*

Sec. 198. Married women to be personally known to officer; to be made acquainted with contents, etc.
Sec. 199. What certificate to contain.
Sec. 200. Everg conveyance to be recorded; to be notice to third persons.
Sec. 201. Filing same for record to be notice.
Sec. 202. Unrecorded deeds void as against those recorded.
Sec. 203. Power of attorney to be acknowledged and recorded.
Sec. 204. Not considered revoked until recorded.
Sec. 205. Recorded conveyance may be read in evidence without proof.
Sec. 206. When deed lost record may be used in evidence.
Sec. 207. Record not to be conclusive proof.
Sec. 208. Record of deed proved by incompetent witness not evidence.
Sec. 209. Person conveying real estate without title, afterwards acquiring, title to vest in grantee.
Sec. 210. Person out of possession may convey real estate.
Sec. 211. What term "real estate" to embrace.
Sec. 212. What the term "conveyance" to embrace.
Sec. 213. How satisfaction of mortgage entered.
Sec. 214. Mortgage to be satisfied on record when certificate presented.
Sec. 215. Certificate to be recorded.
Sec. 216. Mortgagee liable for not having satisfaction of mortgage entered.
Sec. 217. Conveyances heretofore made to be recorded as provided in this act.
Sec. 218. Legality of instruments heretofore made not affected by this act.
Sec. 219. Grant to two or more persons to hold in common.
Sec. 220. Term "heirs" not necessary to convey fee simple.
Sec. 221. "Heirs" mentioned in remainder construed to mean those living at death of ancestor.
Sec. 222. Future estate to be defeated by birth of posthumous child.
Sec. 223. No present estate necessary to support contingent remainder.
Sec. 224. Grants of rent or remainder good without attornment.
Sec. 225. Attornment of tenant to stranger void.
Sec. 226. Lineal and collateral warrantees abolished.
Sec. 227. Construction of terms "grant," "bargain," and "sale."
Sec. 228. All instruments recorded to be notice after passage of this act.
Sec. 229. When wife lives out of Trritory she need not sign deed.

SEC. 178. Conveyances of land, or of any estate or interest therein, may be made by deed signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as hereinafter directed.

SEC. 179. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried.

SEC. 180. Every conveyance in writing whereby any real estate is conveyed, or may be affected, shall be acknowledged or proved and certified in the manner hereinafter provided.

SEC. 181. The proof of acknowledgment of every conveyance affecting real estate shall be taken by some one of the following officers:

First. If acknowledged or proved within this Territory, by some judge or clerk of a court having a seal, or by some notary public or some justice of the peace within this Territory; and the certificate of such acknowledgement or proof shall be under the hand of such judge or clerk and the seal of such court, or under the hand of such justice of the peace; and if the property affected by such conveyance is not in the county for which such justice is an officer, the official character of such justice shall be certified to under the hand and official seal of the county clerk of the county within and for which such justice may be elected or acting.

Second. If acknowledged or proved without this Territory, and within the United States, by some judge or clerk of any court of the United States, or of any State or Territory having a seal, or by a notary public or a justice of the peace, or by any commissioner appointed by the governor of this Territory for that purpose, and the certificate of such acknowledgement or proof shall be under the hand of such judge or clerk and the seal of such court, or under the hand of such notary public or commissioner and his official seal, or under the hand of such justice of the peace; and, in all cases, the official character of such justice shall be certified under the seal of the court, tribunal, or officer within and for the county in which such justice of the peace may be acting, which has cognizance of the official character of such justice.

SEC. 182. Every officer who shall take the proof or acknowledgment of any conveyance affecting any real estate shall grant a certificate thereof, and cause such certificate to be endorsed or annexed to such conveyance. Such certificate shall be, when granted by any judge or clerk, under the hand of such judge or clerk and the seal of the court; when granted by any officer who has a seal of office, under the hand and official seal of such officer.

SEC. 183. No acknowledgment of any conveyance whereby any real estate is conveyed or may be affected shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance, as a party thereto, or shall be proved to be such by oath or affirmation of a credible witness.

SEC. 184. The certificate of acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

SEC. 185. Such certificate shall be substantially in the following form, to wit:

TERRITORY OF MONTANA, } *ss.*
County of———, }

On this——day of————, A. D. 18—, personally appeared before me, a notary public (judge, or other officer as the case may be), in and for said county, A B, personally known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

SEC. 186. When the grantor is unknown to the judge or other officer taking the acknowledgment, the certificate may be in the following form, to wit:

TERRITORY OF MONTANA, } *ss.*
County of———, }

On this ——day of————, A. D. 18—, personally appeared before me, a notary public (judge, or other officer) in and for said county, A B, satisfactorily proved to me to be the person described in, and who executed the within conveyance, by the oath of C D, a competent and credible witness, for that purpose by me duly sworn, and he, the said A B, acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

SEC. 187. The proof of the execution of any conveyance whereby any real estate is conveyed or affected shall be: First. By the testimony of a subscribing witness; or, second, when all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party and at least one subscribing witness.

SEC. 188. No proof of a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof, to be the person whose name is subscribed to the conveyance as witness thereto, or shall be proved to be such by the oath or affirmation of a credible person.

SEC. 189. No certificate of such proof shall be granted unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party is the person described in and who executed the same, that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

SEC. 190. The certificate of such proof shall set forth the following matters:

First. The fact that such subscribing witness was known to the officer granting the certificate to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate.

Second. The proof given by such witness of the execution of such conveyance, and of the facts that the person whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

SEC. 191. No proof of evidence of the handwriting of the party and of a subscribing witness shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof.

SEC. 192. No certificate of such proof shall be granted, unless a competent and credible witness shall state, on oath or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature, stating his means of knowledge, and believes the name of the person subscribed thereto as a party was subscribed by such person, nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature and stating his means of knowledge, and believes the name subscribed thereto as a witness was thereto subscribed by such person.

SEC. 193. Upon the application of any grantee in any conveyance required by this act to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment for proof of such conveyance may issue a subpœna requiring such witness to appear before such officer and testify touching the execution thereof.

SEC. 194. Every person, who being served with a subpœna, shall, without reasonable cause, refuse or neglect to appear, or, appearing, shall refuse to answer upon oath touching the matter aforesaid, shall be liable to the party injured, in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain without bail, until he shall submit to answer, upon oath, as aforesaid; but no person shall be required to attend who resides out of the county in which proof is taken, unless his reasonable expenses be first tendered.

SEC. 195. A certificate of the acknowledgment of any conveyance, or the proof of the execution thereof, as provided in this act signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the recorder of any county in this Territory.

SEC. 196. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself and by her husband, and certified in the manner hereinafter provided by the proper officer taking the acknowledgment.

SEC. 197. Any officer authorized by this act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be effected, may take and certify the acknowledgment of a married woman to such conveyance of real estate.

SEC. 198. No such acknowledgment shall be taken unless such married woman shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness, nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on examination apart from and without the hearing of her husband, that she does not wish to retract the execution of the same.

SEC. 199. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this article shall be valid.

Sec. 200. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, may be effected, proved, acknowledged, and certified in the manner prescribed in this act to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

Sec. 201. Every such conveyance and instrument in writing acknowledged or proved and certified, and recorded in the manner prescribed in this article, from the time of filing the same with the recorder for record, shall impart notice to all persons of the contents thereof, and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

Sec. 202. Every conveyance of real estate within this Territory hereafter made, which shall not be recorded as provided for in this article, shall be deemed void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

Sec. 203. Every power of attorney, or other instrument in writing containing the power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another any conveyance whereby any real estate is conveyed or may be effected, shall be acknowledged or proved, and certified and recorded as other conveyances whereby any real estate is conveyed or effected, are required to be acknowledged or proved, and certified and recorded.

Sec. 204. No such power of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

Sec. 205. Every conveyance, or other instrument conveying or effecting real estate, which shall be acknowledged or proved and certified as hereinafter prescribed, may, together with the certificate of acknowledment or proof, be read in evidence without further proof.

Sec. 206. When any such conveyance or instrument is acknowledged or proved, certified and recorded in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof.

Sec. 207. Neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record, nor the transcript of the record of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

SEC. 208. If the party contesting the proof of any such conveyance or instrument shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance or instrument, nor the record thereof, shall be received on evidence until established by other competent proof.

SEC. 209. If any person convey any real estate by conveyance purporting to convey the same in fee simple absolute, and shall not, at the time of such conveyance, have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

SEC. 210. Any person claiming the title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the manner and with the same effect as if he was in actual possession of the same.

SEC. 211. The term "real estate," as used in this article, shall be construed as co-extensive in meaning with lands, tenements, hereditaments and possessory titles to public lands in this Territory.

SEC. 212. The term "conveyance," as used in this article, shall be construed to embrace every instrument in writing by which any real estate, or interest in real estate, is created, alienated, mortgaged, or assigned, except wills, leases for a term not exceeding one year, and executory contracts for the sale or purchase of lands.

SEC. 213. Any mortgage that has been or may be hereafter recorded may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder or his deputy, who shall subscribe the same as a witness. Such entry shall have the same effect as a deed of release duly acknowledged and recorded.

SEC. 214. Any mortgage shall also be discharged upon the record thereof, by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified as hereinbefore prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

SEC. 215. Every such certificate, and the proof and acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record in the minutes of the discharge of such mortgage made by the recorder upon the margin of the record thereof.

SEC. 216. Any mortgagee, or his personal representative, or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall, for the space of seven days after being thereto requested, refuse or neglect to execute and acknowledge a certificate of discharge or release thereto, shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

SEC. 217. All conveyances of real estate heretofore made and acknowledged or proved according to the laws in force at the time of such making and acknowledgment of proof, shall have the same force as evidence, and be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this article.

SEC. 218. The legality of the execution, acknowledgment, proof from, or record of, any conveyance or other instrument heretofore made, executed, acknowledged, proved, or recorded, shall not be affected by anything contained in this article, but shall depend for its validity or legality upon the laws then existing and in force.

SEC. 219. Every interest in real estate granted or devised to two or more persons, other than executors or trustees, as such, shall be a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

SEC. 220. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple, and every conveyance of any real estate hereafter executed shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms or be necessarily implied in the terms of the grant.

SEC. 221. When a remainder in lands or tenements, goods, or chattels, shall be limited by deed or otherwise, to take effect on the death of any person without heir or heirs of his or her body, or without issue, the word "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

SEC. 222. A future estate, depending on the contingency of the death of any person without heirs or issue or children, shall be defeated by the birth of a posthumous child of such person.capable of taking a descent.

SEC. 223. When an estate shall, by any conveyance, be limited in remainder to the son or daughter or issue, or to the use of the son or daughter or issue, to be begotten, such son or daughter or issue, born after the decease of his or her father, shall take the estate in the same proportion and in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death.

SEC. 224. Grants of rents, or of reversions or remainders, shall be good and effectual without attornment of the tenants, but no tenant who, before the notice of the grant, shall have paid rent to the grantor, shall suffer any damage thereby.

SEC. 225. The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenant, or in pursuance to, or in consequence of, a judgment or decree of some court of competent jurisdiction.

SEC. 226. Lineal or collateral warrantors, with all their incidents, are abolished, but the heirs and devisees of every person who shall have made any covenant or agreement in reference to the title of, in, or to any real estate, shall be answerable upon such covenant or agreement to the extent of the land descended or devised to them in the case and in the manner prescribed by law.

SEC. 227. The words "grant," "bargain," and "sell," in all conveyances hereafter made, in and by which any estate or inheritance, possessory title or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyance, be construed to be the following express covenants, and none other, on the part of the grantor, for himself, his heirs and assigns, to the grantee, his heirs and assigns:

First. That previous to the time of the execution of such conveyance the grantor has not conveyed the same real estate, or any right, title, or interest therein, to any person other than the grantee.

Second. That such real estate is at the time of the execution of such conveyance free from incumbrances, done, made or suffered by the grantor or any person claiming under him; and such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

SEC. 228. All instruments of writing mentioned in this article, now copied in the proper books of record of the several counties of this Territory, acknowledged and recorded in accordance with the laws in force and effect at the time such instruments are so acknowledged and recorded, shall, after the passage of this article, be deemed to impart to subsequent purchasers and incumbrancers, and all other persons whomsoever, notice of all such deeds, mortgages, power of attorney, or other instrument, so far as to the extent the same may be found recorded, copied, or noted in the books of record.

SEC. 229. That any citizen, by deed, mortgage, or other conveyance, conveying property situated in this Territory, who has a wife living in any other State or Territory, can convey the full title to such property by his own signature, and the want of the signature of the said wife shall in nowise invalidate such conveyance.

NOTE.—Act January 12th, 1872.

CHAPTER XIV.

CONVICTS.

ARTICLE I.

CONTRACT FOR KEEPING CONVICTS IN THE PENITENTIARY.

Sec. 230. *Governor may contract with United States authorities.*
Sec. 231. *Convicts to be kept in penitentiary.*
Sec. 232. *The account of the warden.*
Sec. 233. *Sale of warrants to pay for maintenance of convicts.*
Sec. 234. *Contract for labor of convicts.*
Sec. 235. *Clothing furnished destitute convict when discharged.*
Sec. 236. *Maintenance defined.*

SEC. 230. That the governor of the Territory is hereby authorized and directed to enter into, make, and execute, on behalf of and in the name of the Territory, upon such terms as he shall think best, a contract with the authorities of the United States for the keeping, clothing, and maintenance in the United States penitentiary at Deer Lodge, for a term of years not to extend beyond the first day of August, 1881, of all persons sentenced to confinement in the Territorial penitentiary for offences against the laws of the Territory: *Provided,* That the amount contracted to be paid by the Territory shall not exceed the sum of one dollar per day, for keeping, clothing, and maintaining each convict; and within ninety days before the time when such contract shall expire, the governor may renew the same, on terms alike advantageous to the Territory, for the further period of not exceeding two years, unless otherwise prohibited by law.

SEC. 231. All persons sentenced to imprisonment in the penitentiary under the laws of this Territory shall be confined in the United States penitentiary at Deer Lodge, in pursuance of the contract to be made as above provided.

SEC. 232. It shall be the duty of the warden, or the officer of the United States in charge of the penitentiary, to make out and deliver to the governor an account of the money due from the Territory, specifying the name of each Territorial prisoner, and the length of time the Territory is charged for such prisoner, and shall certify that such amount is correct, and that the prisoners charged for have been kept in the penitentiary during all the time charged for them respectively, which account shall be examined by the governor, and, if he is satisfied that the same is correct, he shall so certify, and, upon presentation to and filing with the Territorial auditor of such account and certificate, said auditor shall proceed to provide for the payment of said account, as provided in section 233 of this article.

SEC. 233. The Territorial auditor is hereby required to issue Territorial warrants for such amounts as may be necessary to pay for the maintenance, clothing, and keeping, and, in case of death, the necessary expenses of burial of such convicts, and the governor and auditor are authorized and required to sell the same at the highest price that can be obtained therefor, and apply the proceeds of such sale to the payment of all sums due, or that may become due, the United States under the provisions of this article: *Provided*, It shall be the duty of the Territorial auditor, previous to selling said Territorial warrants, to cause to be published in a newspaper published at the seat of government of this Territory, at least four consecutive weeks before such sale, a notice thereof specifying the amounts of warrants to be sold, and the time and place of such sale.

SEC. 234. The governor is hereby authorized to make such contract as he shall think advantageous to the Territory, for the hire or labor of the Territorial convicts for the period of not exceeding two years, and to apply the proceeds of the labor of such prisoners in payment of the amount due the United States for the keeping, clothing, and maintenance of such prisoners: *Provided*, That the governor may make provision in such contract that the warden, or other officer of the United States having charge and control of said Territorial prison, may retain not to exceed 30 per cent. of such proceeds, as compensation for his services in keeping, and rendering, accounts of such labor, and accounting to the treasurer therefor.

SEC. 235. Whenever any Territorial convict shall be discharged from imprisonment, and shall be destitute of proper and sufficient clothing, and of means to procure the same, the governor is hereby authorized and directed to provide proper and sufficient clothing for such prisoner, upon the certificate of the warden, or other officer in charge of the penitentiary, that the same is necessary: *Provided*, The cost of such clothing furnished any one prisoner shall not exceed fifteen dollars; and he shall also pay the additional sum of five dollars in money, and, upon the filing by the governor, in the office of the Territorial auditor, of the certificate of such warden, or other officer in charge, and of the governor, that such clothing was necessary, and has been furnished, the said auditor is authorized and directed to draw his warrant on the Territorial treasury for the amount so expended for clothing in favor of the governor, payable out of any money in the treasury not otherwise appropriated.

Sec. 236. Whenever the word maintenance occurs in the preceding sections of this article, it is understood to mean support, in sickness as well as health, including all necessary medical attendance and care.

Note.—Act February 20th, 1879.

ARTICLE II.

CONVICTS' GOOD TIME LAW.

Sec. 237. *Deduction from time of sentence for good behavior.*
Sec. 238. *Forfeiture of good time for bad behavior.*
Sec. 239. *Several sentences construed as one.*
Sec. 240. *Construction as to convicts already imprisoned.*

Sec. 237. That every convict who is now or who may hereafter be confined in the Territorial penitentiary, and who shall have no infraction of the rules and regulations of the penitentiary or laws of the Territory recorded against him, and who performs in a faithful manner the duties assigned to him, in an orderly and peaceable manner, shall be entitled to diminution of time from his sentence as appears in the following table, for the respective years of his sentence, and *pro rata* for any part of a year when the sentence is more or less than a year:

NO. OF YEARS OF SENTENCE.	GOOD TIME GRANTED.	TOTAL GOOD TIME MADE.	TIME TO BE SERVED IF FULL TIME IS MADE.
1st year	1 month	1 month	11 months.
2d year	2 months	3 months	1 year and 9 months.
3d year	3 months	6 months	2 years and 6 months.
4th year	4 months	10 months	3 years and 2 months.
5th year	5 months	1 year and 3 months	3 years and 9 months.
6th year	6 months	1 year and 9 months	4 years and 3 months.
7th year	6 months	2 years and 3 months	4 years and 9 months.
8th year	6 months	2 years and 9 months	5 years and 3 months.
9th year	6 months	3 years and 3 months	5 years and 9 months.
10th year	6 months	3 years and 9 months	6 years and 3 months.
11th year	6 months	4 years and 3 months	6 years and 9 months.
12th year	6 months	4 years and 9 months	7 years and 3 months.
13th year	6 months	5 years and 3 months	7 years and 9 months,
14th year	6 months	5 years and 9 months	8 years and 3 months.
15th year	6 months	6 years and 3 months	8 years and 9 months.
16th year	6 months	6 years and 9 months	9 years and 3 months.
17th year	6 months	7 years and 3 months	9 years and 9 months.
18th year	6 months	7 years and 9 months	10 years and 3 months.
19th year	6 months	8 years and 3 months	10 years and 9 months.
20th year	6 months	8 years and 9 months	11 years and 3 months.
21st year	6 months	9 years and 3 months	11 years and 9 months.
22d year	6 months	9 years and 9 months	12 years and 3 months.
23d year	6 months	10 years and 3 months	12 years and 9 months.
24th year	6 months	10 years and 9 months	13 years and 3 months.
25th year	6 months	11 years and 3 months	13 years and 9 months.

SEC. 238. In case any convict shall be guilty of the violation of any of the rules or laws of the penitentiary, or of the Territory, as above provided, and has become entitled to any diminution of his sentence by the provisions aforesaid, he shall, for the first offence, forfeit, if he has made so much, two (2) days; for the second offence, four (4) days; for the third offence, eight (8) days; and for the fourth offence, sixteen (16) days, and, in addition thereto, whatever number of days more than one that he is in punishment shall also be forfeited. For more than four offences the warden shall have the power to deprive him, at his discretion, cf any portion or all of the good time that the convict may have earned, but not less than as provided for the fourth offence.

SEC. 239. That whenever any convict is or has been committed under several convictions, with separate sentences, they shall be construed as one continuous sentence under this law in the granting or forfeiting of good time.

SEC. 240. The warden, in computing the diminution of time for those convicts now in the penitentiary, shall allow them the "good time granted," but not the "good time made," for the year or part of a year of their unexpired sentence, the same as if this law had been in effect at the commencement of their sentence.

NOTE.—Act February 16th, 1877.

ARTICLE III.

INSANE CONVICTS.

Sec. 241. *Trial of convict's sanity and removal to asylum.*
Sec. 242. *Restoration of reason; return to prison.*
Sec. 243. *Officers' fees.*

SEC. 241. Whenever it shall appear that a Territorial convict, who is serving a term of imprisonment in the United States penitentiary at Deer Lodge, or other prisons where Territorial convicts are confined, is insane, the warden, or other officer in charge of such penitentiary or prison, shall certify the fact to the probate judge of the county in which such penitentiary or prison is located. The said judge shall thereupon cause the said convict to be brought before him, at such time and place as he may direct, and the said judge shall, also, cause to appear, at the same time and place, a jury of three citizens of his county, one of whom shall be a licensed practicing physician, who shall proceed to examine the person said to be insane; and, if such jury, after careful examination, shall certify, upon oath, that the charge is correct, such judge shall make out duplicate warrants reciting such facts, and place them in the hands of the sheriff of said county, who shall immediately, in compliance therewith, convey the person therein named and deliver him to the contractor for the custody, maintenance and treatment of insane persons, at the place designated; and such contractor shall acknowledge, by endorsement in writing upon each of said warrants, the delivery of such persons therein described to him, and the date thereof; and such sheriff shall return one of said warrants to the officer issuing the same, and forward the other to the governor of the Territory, who shall file and preserve the same.

Sec. 242. If, at any time during the period for which such convict was sentenced, it shall appear to such contractor that he is restored to reason, and is of sound mind, he shall notify the sheriff of the county in which such penitentiary or prison is located, who shall thereupon convey and deliver him to the warden, or other officer in charge of such penitentiary or prison, and such convict shall be confined for the remainder of the term for which he was sentenced.

Sec. 243. For the services required by this article, the probate judge and sheriff shall receive the fees that are provided by sections 716 and 717 of chapter 30, relating to insane.

Note.—Approved February 21st, 1879.

CHAPTER XV.

CORPORATIONS.

ARTICLE I.

CORPORATIONS FOR INDUSTRIAL OR PRODUCTIVE PURPOSES.

Sec. 244. *Parties to sign and acknowledge a certificate in writing, setting forth terms of corporation.*
Sec. 245. *Copy certified by secretary of the Territory to be evidence; to have a corporate seal.*
Sec. 246. *Certificate may designate more than one place of business.*
Sec. 247. *Certificate to state place of business outside of Territory.*
Sec. 248. *Notice of election; how elected, etc.*
Sec. 249. *Election not held on day appointed not to dissolve corporation.*
Sec. 250. *How president designated, and to give security.*
Sec. 251. *Trustees to demand subscription not exceeding twenty per cent.*
Sec. 252. *Powers of trustees.*
Sec. 253. *Stock to be deemed personal property, and how transferred.*
Sec. 254. *Certificate prima facie evidence of incorporation.*
Sec. 255. *Stockholders individually liable to amount of unpaid stock.*
Sec. 256. *Trustees to make purchases and issue stock in payment.*
Sec. 257. *President and trustees to make certificate of amount of stock paid in.*
Sec. 258. *Report to be published annually.*
Sec. 259. *Trustees to be liable if they pay dividend while company is insolvent.*
Sec. 260. *No loan to be made to stockholders.*
Sec. 261. *Officers liable for signing false report.*
Sec. 262. *Party pledging stock liable as stockholder.*
Sec. 263. *Representative of stock may vote as stockholder.*
Sec. 264. *Legislature may amend or repeal act.*
Sec. 265. *Corporation may increase or diminish capital stock.*
Sec. 266. *Publication of meeting to increase or diminish stock.*
Sec. 267. *Representation of two-thirds of stockholders to increase or diminish stock.*
Sec. 268. *Trustees assenting when personallg liable.*
Sec. 269. *Treasurer to keep a book with names of all stockholders; penalty for refusing inspection of books.*

Sec. 270. *Persons owning fifteen per cent. of capital stock may demand statement of treasurer.*
Sec. 271. *What certificate of ditch company to contain.*
Sec. 272. *Priority of right to govern direction of water.*
Sec. 273. *Rates for water to be fixed by county commissioners.*
Sec. 274. *Company to keep banks of ditch in good order.*
Sec. 275. *What certificate of flume company to specify.*
Sec. 276. *What certificate of quartz company to specify.*
Sec. 277. *Tunnel company to have right of way.*
Sec. 278. *What certificate of telegraph company to specify.*
Sec. 279. *When companies to begin and complete work.*
Sec. 280. *Powers of corporation under this act.*
Sec. 281. *How powers restricted.*
Sec. 282. *Persons liable to fine and imprisonment for damaging corporation's property.*
Sec. 283. *Nothing in this act to authorize issuing paper money.*
Sec. 284. *How companies heretofore formed organize under this act.*
Sec. 285. *How land required by company to be appraised and condemned.*
Sec. 286. *How companies formed under this act may be disincorporated.*
Sec. 287. *Powers of trustees after dissolution.*
Sec. 288. *How place of business removed.*
Sec. 289. *Foreign corporations file copy of charter with secretary of Territory and county recorder.*
Sec. 290. *If charter not filed with secretary within thirty days; act of incorporation, how proved.*
Sec. 291. *Ferries, toll-bridges and toll-roads not to be established.*

SEC. 244. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business, dig ditches, build flumes, run tunnels, or to carry on any branch of business designed to aid in industrial or productive interest of the country, make, sign, and acknowledge, before some officer competent to take acknowledgments of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of the Territory, a certificate in writing, in which shall be stated the corporate name of said company, and the object for which the company shall be formed, the amount of capital stock of the said company, the term of its existence, not to exceed twenty years, the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of said company for the first three months, and the name of the city, town, or locality, and the county in which the operations of said company shall be carried on.

SEC. 245. When the certificate shall have been filed as aforesaid, the secretary of the Territory shall record and carefully preserve the same in his office, and a copy thereof, duly certified by the secretary of the Territory, under the seal of the Territory of Montana, shall be evidence of the existence of such company, and the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate in fact and in name, by the name stated in such certificate, and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this Territory; and they and their successors may have a common seal, and may make and alter the same at pleasure; and they shall, by their corporate name, be capable in law of acquiring by purchase, pre-emption, donation, or otherwise, and holding or conveying by deed, or otherwise, any real or personal estate whatever, which may be necessary to enable the said company to carry on their operations named in the certificate.

SEC. 246. Any certificate hereafter filed and recorded under the provisions of this article may designate one or more places where the company may carry on their business in the Territory of Montana.

SEC. 247. If any company shall be formed under this article for the purpose of carrying on any part of its business in any place outside of this Territory, the said certificate shall so state, and shall also state the name of the city, town, or locality, and county in which the principal part of the business of said company within this Territory is to be transacted, and said town and county shall be deemed the town, place and county in which the operations and business of the company are to be carried on, and its principal place of business within the meaning and provisions of this article.

SEC. 248. The stock, property and concern of such company shall be managed by not less than three nor more than nine trustees, who shall respectively be stockholders in said company, who shall, except the first three months, be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of said company; and public notice of the time and place of holding such elections shall be published, not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, provided one-half of the stock is represented. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as shall be prescribed by the laws of said company.

NOTE.—The preceding five sections are from the Act of January 12th, 1872.

The trustees of every corporation heretofore, or hereafter, organized under the laws of this Territory providing for the formation of corporations for the conduct of any business for pecuniary profit, shall be chosen at one time, and on a general ticket. At such election for trustees, each stockholder shall have as many votes as the number of shares of stock held by him multiplied by the number of trustees to be chosen, and may cast all his votes for one candidate, or distribute them as he may see fit, and the persons having the greatest number of votes shall be trustees; and Section 5, of Chapter XVIII, of "An act revising, re-enacting and codifying the general and permanent laws of Montana Territory," approved January 12th, 1872, is hereby amended accordingly.

NOTE.—Act of February 21st, 1879.

SEC. 249. In case it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company, for that reason, shall not be dissolved; but it shall be lawful, on any other day, to hold an election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company until their successors shall be elected.

SEC. 250. There shall be a president of the company, who shall be designated from the number of trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the company, by its by-laws, may require.

SEC. 251. It shall be lawful for the trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or installments as the trustees shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payments shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

SEC. 252. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of the United States and of this Territory, and prescribing the duties of officers, artificers, and servants that may be employed; for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

SEC. 253. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except as between the parties thereto, until the same shall have been so entered upon the books of the company as to show the names of the parties by and to whom transferred, the numbers and designation of the shares, and the date of the transfer.

SEC. 254. The copy of any certificate of incorporation, filed and recorded in pursuance of this article, certified by the secretary of the Territory, under the great seal of the Territory of Montana, to be a true copy, and the whole of such certificate shall be received in all courts and places as *prima facie* evidence of the facts therein stated.

SEC. 255. All stockholders of every company incorporated under the provisions of this article shall be severally and individually liable to the creditors of the company in which they are stockholders, to the amount of unpaid stock held by them respectively, for all acts of and contracts made by such company, until the whole amount of capital stock, fixed and limited, shall be paid in, and a certificate thereof shall have been made and recorded, as prescribed in the following sections; and the capital stock so fixed and limited, shall all be paid in—one-half thereof within two years and the other half thereof in four years from the incorporation, or said corporation shall be dissolved.

SEC. 256. The trustees of such company may purchase mines, manufactories, and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full stock, and not liable to any further call; neither shall the holders thereof be liable for any further payments under the provisions of section 253 of this article; but in all statements and reports of the company to be published, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported, in this respect, according to the facts.

SEC. 257. The president and a majority of the trustees, within thirty days after the payment of the first installment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees, and they shall, within the said thirty days, record the same in the office of the county clerk of the county wherein the business of said company is carried on.

SEC. 258. Every such company shall, annually, within twenty days from the first day of September, make report, which shall be published in some newspaper published in the town, city, or village, or, if there be no newspaper published in said town, city, or village, then in some newspaper published nearest the place where the business of said company is carried on, which shall state the amount of capital and the proportion actually paid in, and the amount of existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the clerk of the county where the business of the company shall be carried on, and if any of said company shall fail to do so, all the trustees of the company shall be jointly and severally liable for all debts of the company then existing, and for all that shall be contracted before such report shall be made.

SEC. 259. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office: *Provided*, That if any of the trustees shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the clerk of the company, and with the clerk of the county, they shall be exempt from the said liability.

SEC. 260. No loan of money shall be made by any such company to any stockholder therein, and if any such loan shall be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest for all the debts of the company contracted before the repayment of the sum loaned.

SEC. 261. If any certificate or report made or public notice given by the officers of any such company, in pursuance of the provisions of this article, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

SEC. 262. No person holding stock in any such company as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such trust fund, would have been if he had been living and competent to act, and held the same stock in his own name.

SEC. 263. Every such executor, administrator, guardian, or trustee, shall represent the shares of stock in his hands at all meetings of the company, and may vote, accordingly, as a stockholder; and every person who shall pledge his stock, as aforesaid, may, nevertheless, represent the same at all such meetings, and may vote accordingly, as a stockholder.

SEC. 264. The legislature may at any time alter, amend, or repeal this article, but such amendment or repeal shall not take away or impair any rights acquired or remedy given against any such corporation, its stockholders, or officers, for any liability which shall have been previously incurred.

SEC. 265. Any corporation or company heretofore formed, either by special act or under the general law, and now existing, or any company which may be formed under this article, may increase or diminish its capital stock, by complying with the provisions of this article, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in section 244 of this article, subject to the provisions and liabilities of this article; but, before any corporation shall be entitled to diminish the amount of its capital stock, if the amounts of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital, and any existing company heretofore formed under any special act, may come under and avail itself of the provisions of this article by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all restrictions, duties, and liabilities of this article.

SEC. 266. Whenever any company shall desire to call a meeting of stockholders for the purpose of availing itself of the privilege of this article, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence at least six weeks previous to the day fixed for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed; and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business as aforesaid, or to enable a company to avail itself of the provisions of this article.

Sec. 267. If at any time and place specified in the notice provided for in the preceding sections of this article, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of votes have been in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this article, a certificate of the proceedings showing a compliance with the provisions of this article, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debt and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed and recorded as required by section 244 of this article, and, when so filed and so recorded, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed, as aforesaid, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this article, as the case may be.

Sec. 268. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally liable for such excess to the creditors of such company.

Sec. 269. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who have been or shall, within the provisions of this article, become stockholders of such company, showing their places of residence, the number of the shares of stock held by them respectively, and the time when they became respectively the owners of such shares, and the amount of the stock actually paid in, which book shall, during the usual business hours of the day and on every day except Sunday and the Fourth of July, be open for the inspection of stockholders and creditors of the company and their personal representatives, where the office or principal place of business operation shall be located, and any and every such stockholder, creditor, or representative, shall have a right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this article, until it shall have been entered therein as required by this section, by an entry showing to and from whom transferred; such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff to any suit or proceeding against such company or against any one or more stockholders. Every officer or agent of such company who shall neglect to make any proper entry in such book, or shall refuse or neglect to make any proper entry in such book, or shall make any improper entry, or shall refuse or neglect to exhibit the same or allow the same to be inspected and extracts taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid shall forfeit to the people of Montana the sum of fifty dollars for every day it shall so neglect, to be sued and recovered in the name of the people of said Territory, by the district attorney of the county in which the business of such corporation shall be located, and when so recovered the amount shall be paid into the treasury of such county for the use of common schools therein.

SEC. 270. Whenever any person or persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this article shall present a written request to the treasurer thereof that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of the company, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office for six months thereafter, a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this article, he shall forfeit and pay to the person presenting said written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

SEC. 271. Whenever any three or more persons associate under the provisions of this article to form a company for the purpose of constructing a ditch, for the purpose of conveying water to any mines, mills, or lands, to be used for mining, milling, or the irrigation of lands, they shall, in their certificate, in addition to the matters required in section 244 of this article, specify as follows: The stream or streams from which the water is taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch, as near as may be, and the use to which the said water is intended to be applied.

SEC. 272. Any ditch company formed under the provisions of this article shall have the right of way over the line named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate through their ditch: *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those acquired under this article, and by virtue of said certificate; nor shall the water of any stream be diverted from its original channel to the detriment of any mines, mill men, or others along the line of said stream, who may have priority of right.

SEC. 273. Any company constructing a ditch, under the provisions of this article shall furnish water in the way and manner named in the certificate, in the way and manner the water is designated to be used, whether miners, mill men, or farmers, whenever they shall have water in their ditch unsold; and shall at all times give the preference to the use of the water in said ditch to the class of persons so named in the certificate; the rates at which water shall be furnished to be fixed by the county commissioners or the tribunal transacting county business, as soon as such ditch shall be completed and prepared to furnish such water.

SEC. 274. Every ditch company organized under the provisions of this article shall be required to keep the banks of their ditch in good condition, so that the water shall not be allowed to escape from the same, to the injury of any mining claim, road, ditch or other property; and whenever it is necessary to convey any ditch over, across, or above any lode or mining claim, that the company shall, if necessary to keep the water of said ditch out or from any claim, flume the ditch, so far as necessary to protect such claim or property from the water of said ditch.

SEC. 275. That when any company shall organize under the provisons of this article to form a company for the purpose of constructing a flume, their certificate, in addition to the matter required in section 244 of this article, shall specify as follows: The place of beginning, termini, and route, so near as may be, and the purpose for which such flume is intended; and when organized according to the provisions of this article, said company shall have the right of way over the line proposed in such certificate for such flume; provided it does not conflict with the right of any former fluming, ditching or other company.

SEC. 276. Whenever any three or more persons shall associate under the provisions of this article, for the purpose of running a tunnel for mining for gold, quartz, or other ore, their certificate of incorporation shall specify, in addition to the matters required by section 244 of this article, as follows, to wit: Where said tunnel is to be run, the place of commencement, course, and termination, and the minerals or ore designed to be excavated.

SEC. 277. Any company formed under the provisions of this article, for the purpose of excavating a tunnel, shall have and hold eleven hundred feet on each side of said tunnel, on all lodes discovered by them while excavating said tunnel, and through all lodes discovered previous to the commencement of said tunnel they shall have the right of way.

SEC. 278. Whenever any three or more persons associate under the provisions of this article, to form a company for the purpose of constructing a line or lines of magnetic telegraph in this Territory, their certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct said telegraph line or lines from point to point, along and upon any of the public roads, by the erection of any necessary fixtures, including posts, piers, and abutments, necessary for the wires: *Provided*, That the same shall not incommode the public in the use of said roads or highways.

SEC. 279. Any company formed under the provisions of this article, for the purpose of constructing any ditch or flume, shall, within sixty days from the date of their certificate, commence work on such ditch or flume as shall be named in the certificate, and shall prosecute the work with due diligence until the same is completed, and the time of completion of any such ditch shall not be extended beyond a period of three years from the time the work was commenced as aforesaid; and any company failing to commence work within sixty days from the date of certificate, or failing to complete the same within three years from the time of commencement as aforesaid, shall forfeit all the right to the route so claimed, and the same shall be subject to be claimed by any other company. The time for the completion of any flume constructed under the provisions of this article shall not be extended beyond a period of three years, and the county commissioners of the counties in which roads and bridges may have been constructed under the provisions of the act of which this is amendatory, shall have the right to purchase the same, upon agreement with said company or companies, and declare them free for public use.

SEC. 280. Every corporation formed under the provisions of this article, has power:

First. To have successsion by its corporate name, for the period limited in its certificate of charter.

Second. To sue and be sued, complain and defend in any court of law or equity.

Third. To make and use a common seal, and alter the same at pleasure.

Fourth. To hold, purchase, and convey such real and personal estate as the purposes of the corporation may require.

Fifth. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

Sixth. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock: *Provided,* That no corporation formed under the provisions of this article shall own or hold possession of more than six hundred and forty acres of land.

SEC. 281. The powers enumerated in the preceding section shall vest in any corporation that shall hereafter be created, although they may not be specified in the certificate; but no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated.

SEC. 282. Any person who shall willfully or maliciously damage or interfere with any road, ditch, flume, bridge, ferry, telegraph line, or any of the fixtures, tools, implements, appurtenances, or any property of any company which may be organized under the provisions of this article, upon conviction thereof, before any court of competent jurisdiction in the county where the offence shall have been committed, shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment, or both, at the discretion of the court, said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, and to be paid into the county treasury for the use of the common schools; and said offender shall also pay all damages that any such corporation may sustain, together with costs of suit.

SEC. 283. Nothing in this article shall be so construed as to authorize any company, authorized under the same, to issue notes or bills for circulation as money.

SEC. 284. That any company organized under the provisions of this article, and other companies who have become bodies corporate, heretofore formed under the provisions of any general law, or any special act, who may desire to come under and avail itself of the privileges and provisions herein granted, shall give notice to the secretary of the Territory, of their surrender of their rights and privileges under any previous law or act, said notice to be certified to by the president of said company, and to be filed in the office of the secretary of the Territory, and become a body corporate and politic, by complying with all and singular the provisions of this article.

SEC. 285. Whenever any road, ditch, telegraph or fluming company, organized under the provisions of this article, shall not have acquired by gift or purchase, any land, real estate, or claim required for the construction or maintenance of any road, ditch, telegraph or flume, or which may be affected by any operations connected with the construction or maintenance of the same, the said corporation may present to the probate judge of the county wherein such lands, real estate, or claims shall be, a petition signed by the president, attorney, or agent of the same, describing with convenient accuracy and certainty, by maps or otherwise, the lands, real estate, or claims so required to be taken, or affected as aforesaid, setting forth the name and residence of each owner, or other person interested therein as owner, lessee, or incumbrancer, as far as known to such president, attorney, or agent, or appearing of record upon local or county records, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner and person interested for the taking or injuriously affecting such land, real estate, or claims, as aforesaid. The probate judge shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of appraisers between said corporations and the owners, and the persons interested in such lands, real estate, and claims, has been given, at least ten days previously, to such owners, personally, at their residence, or on the premises, or by the publication thereof in a newspaper printed in the county in which such lands, real estate, or claims, shall be, or if no newspaper is published in said county, then by posting three or more notices in some public place in said county, such publication to be allowed only in respect to owners or persons interested, who shall appear by affidavit to have no residence in the county known to such president, attorney, or agent, which notice shall be published at least thirty days prior to the time fixed for the application aforesaid. The court may adjourn the proceedings from time to time, shall direct any future notice thereof to be given, that may seem proper; shall have proofs and allegations of all parties interested, touching the regularity of the proceedings, and shall, by an entry, in its minutes, appoint three disinterested appraisers as aforesaid, specifying in such entry a time and place for the first meeting of such appraisers. The said appraisers, before entering upon the duties of their offices, shall take an oath to faithfully and impartially discharge their duties as said appraisers, and any one of them may administer oaths to witnesses produced before them; they may issue subpœnas, and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose, and shall give reasonable previous notice to such owners or parties interested. They shall have the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear, or favor, or partiality, ascertain and certify the compensation proper to be made to said owners or parties interested, for the lands, real estate, or claims, to be taken or affected, as well as all damages accruing to the owners or parties interested, in consequence of the condemnation of the same, taking, or injuriously affected as aforesaid, making such deductions or allowance for the real benefits or advantages which such owners or parties interested may derive from the construction of said road, ditch, telegraph, or flume. They, or a majority of them, shall make, subscribe, and file in the office of the clerk of the county in which such lands, real estate, or claims shall lie, a certificate of their said ascertainment and assessment, in which such lands, real estate, or claims shall be described with convenient certainty and accuracy. The probate judge, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place, for that purpose, approved by the court, shall make and cause to be entered in its minutes, a rule describing such lands, real estate, or claims, in manner aforesaid, such ascertainment of compensation, with mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the recorder's office of the proper county, in like manner, and with like effect as if it were a deed of conveyance from the said owners and parties interested to the said corporation. Upon the entry of such rule, the said corporation shall become seized in fee, or shall have the exclusive right, title, and possession of all such lands, real estate, or claims described in said rule as required to be taken as aforesaid, during the continuance of the corporation, and may take possession of, and hold and use the same, for the purpose of such said road, ditch, telegraph, or flume, and shall thereupon be discharged from all claims for any damage by reason of any matter specified in such petition, certificate, or rule of said probate judge. If at any time after an attempted or actual ascertainment of compensation under this article, or any purchase by or donation to said corporation of lands or claim for purposes aforesaid, it shall appear that the title acquired thereby to all or any part of such lands, for the use of said corporation, of, or if said assessment shall fail or be deemed defective, the said corporation shall proceed and perfect such title by procuring an assessment of the compensation proper to be made to any person who has title, claim, or interest in, or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this article, the probate judge may, by rule in that behalf made, authorize the said corporation, if already in possession; and if not in possession, to take possession of and use said premises during the pendency, and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation on account thereof: *Provided,* Such corporation shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf when ascertained. And in every case when possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said appraisers shall receive five dollars per day as compensation for each day actually employed, such compensation to be taxed and allowed by the probate judge. If any appraisers so appointed shall die, be unable, or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the probate judge. Applications may be made to the district court in the same manner as herein provided, and the district court may thereupon cause such proceedings to be had and taken in like manner and with the same effect as herein required respecting the probate court.

SEC. 286. Any corporation formed under this article may dissolve and disincorporate itself by presenting to the judge of the district court of the district in which the principal place of business of such corporation is situated, a petition to that effect accompanied by a certificate of the proper officers, and setting forth that at a general or special meeting of the stockholders, called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk of the court, which notice shall set forth the nature of the application, and shall specify the time when, and the place where it is to be heard; and shall be published in some newspaper of the county where the principal place of business of said company is located, for at least four consecutive weeks before the time of the hearing of such application, or if no newspaper be published in the county, then by advertisement posted up for thirty days, in three of the most public places in the county. At the time and place appointed, or any other to which the judge may postpone it, he shall proceed to hear and consider such application, and if satisfied that the corporation has taken the necessary preliminary steps, and obtained the necessary votes to dissolve itself, he shall enter an order declaring it dissolved, and the rights of franchise acquired by said corporation shall cease and become null and void after such dissolution.

SEC. 287. Upon the dissolution of any corporation formed under this article, the trustees, at the time of dissolution, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation; collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

SEC. 288. Any corporation desiring at any time to remove its principal place of business into some other county of the Territory, shall file in the office of the county recorder of such county, a certified copy of its certificate of incorporation, and shall give notice of such removal by publication in some newspaper of the county in which such principal place of business was located, at least once a week for four weeks, and if no newspaper be published in such county, then by advertisement posted up for thirty days, in three of the most public places in said county.

SEC. 289. That hereafter all mining, manufacturing, and other companies or incorporations incorporated by the legislature of any State or Territory of the United States, or incorporated under the general laws of incorporation of any State or Territory other than this Territory, and incorporated for the purpose of carrying on or doing business of any kind, nature, and description whatever in this Territory, shall, before they proceed to do business under the charter or certificate of incorporation in this Territory, file for record with the secretary of the Territory, and also in the office of the recorder of the county in which they are carrying on business, the charter or certificate of incorporation of said company or corporation, duly authenticated, or of the copy of said charter or certificate of incorporation; and the certificate of the president and secretary of said company or corporation, verified under oath by either of the said officers, or the superintendent or managing agent thereof, that the copy of said charter or certificate of incorporation is a true and correct copy of the original charter or certificate of incorporation granted to the persons therein named or their successors, and the charter or certificate of incorporation was granted at the time and place therein mentioned, and under the law of the State or Territory designated; and said foreign incorporations shall remunerate the secretary and recorder for the recording of the same, and said charter so recorded shall be recognized in the courts of this Territory as their foreign act of incorporation.

SEC. 290. That any company or corporation incorporated as in section 244 of this article, that shall neglect or refuse, for the period of thirty days, to file for record their charter or certificate of incorporation, or copy thereof, with the secretary of the Territory and county recorder of the county wherein such business may be carried on, shall be deemed guilty of willful negligence on the part of said company or corporation; and, thereafter, any person or persons maintaining or prosecuting any civil action in any court of this Territory against said company or corporation so neglecting or refusing to file for record their charter or certificate of incorporation, or copy thereof, with the secretary of the Territory and county recorder, as hereinbefore provided, shall not be held to prove on trial the incorporation of said company or corporation by the original charter or certificate of incorporation, or act of incorporation; but the same may be proved by general reputation. And the provisions of this section shall also apply to all companies and incorporations, incorporated by the legislature, or under the general laws of incorporation of any State or Territory of the United States, other than this Territory, that shall have failed or refused to file its charter, or certificate of incorporation, or act of incorporation, or a copy thereof duly authenticated, as provided in section 289 of this article, with the secretary of the Territory and the county recorder of the county in which such company or corporation is carrying on business prior to the commencement of the civil action mentioned in this section.

NOTE.—Act February 3d, 1876.

SEC. 291. From and after the passage of this article no corporations shall be formed under its provisions for the purpose of establishing ferries, toll bridges, or toll roads.

NOTE.—All sections of the preceding article, except where otherwise specially noted, are from the Act of January 12th, 1872.

ARTICLE II.

RELIGIOUS, BENEVOLENT, AND OTHER LIKE CORPORATIONS.

Sec. 292. *What may be incorporated under this article.*
Sec. 293. *Resolntion to incorporate.*
Sec. 294. *Execution and filing of certificate.*
Sec. 295. *Powers acquired.*
Sec. 296. *Corporation for building purposes.*
Sec. 297. *Concerning associations previously incorporated.*
Sec. 298. *Repeal of Act of February 9th, 1876, not to affect corporations thereunder.*

Sec. 292. Associations for the purpose of establishing and conducting churches, lyceums, libraries, lodges of Free and Accepted Masons, Odd Fellows, Good Templars, granges of Patrons of Husbandry, and all other associations, societies, and orders of like character, Agricultural Societies, Stockgrowers' Associations, and other associations and institutions of a like character, may become incorporated upon complying with the provisions of this article.

Sec. 293. It shall be lawful for any such association, at a regular meeting thereof, or at a special meeting for that purpose called, to adopt, by a vote of two-thirds of the members thereof then present, a resolution to the following effect: *Resolved,* That the trustees of this (*lodge, or other association, as the case may be*), to-wit: (*A, B, C, D, etc., giving the names of the duly elected trustees*), be, and are hereby, authorized to incorporate this (*lodge, or as the case may be*), and for that purpose to file with the proper officer such certificate as is required by law; and said trustees shall conduct the affairs of the corporation so formed until (*date at which, by the laws of such association, the next annual election of the trustees thereof occurs*).

Sec. 294. The trustees, of whom there shall not be less than three, nor more than nine, named in such resolution, may thereupon make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this Territory, and have recorded in the office of the recorder of the county in which the affairs of such association are to be conducted, or, if such association shall be a grand lodge or other body having associations subordinate to it in several counties, then, in the office of the secretary of the Territory, a certificate in which shall be stated the name, or title, by which the association shall be known, the particular business or objects of the association, the number of trustees to conduct the same, and the time of the annual election of such trustees; and shall attach to such certificate a copy of the resolution required by section 293 of this article, which copy shall be certified by the presiding and recording officers and the seal of such association.

Sec. 295. Upon filing for record such certificate, such association shall become a body politic and corporate, with power to sue and be sued by its corporate name, to have and use a common seal, which may be altered at pleasure, to establish a constitution and by-laws, and make all such rules and regulations as may be deemed expedient for admission to membership therein, and the termination of such membership, and for the management of its affairs, in accordance with law; to take by purchase, gift, grant, or devise, and hold and use personal property, and so much real estate as may be necessary or convenient to carry out the objects for which it was formed, and to dispose of such property: *Provided,* That the period of existence of such corporation shall not exceed twenty years.

SEC. 296. Any two or more lodges or other associations may elect, each, not exceeding three of its members, with authority to form a corporation for erecting a building, or buildings, and managing, and holding the legal title to real estate for the use of, and in trust for, such associations according to their respective interests in such property. Such persons shall thereupon file a certificate, as near as may be to the like effect as that provided for in section 294 of this article, in the office of the county recorder of the county in which the affairs of such corporation are to be conducted, attaching to such certificate a transcript of the record of their election, certified by the presiding and recording officers of their respective associations; and thereupon such persons and their successors in office shall become a body politic and corporate, with like powers as other corporations provided for in this article.

SEC. 297. In case any such associations, whether incorporated or not, have, prior to the passage of this article, united together for the purpose of forming, or authorizing the formation of a corporation similar in its character to those authorized by section 296 of this article, and the members elected or authorized for that purpose have incorporated, or attempted to incorporate, themselves and have filed a certificate of such incorporation, such incorporation shall be deemed and held to be as valid, to all intents and purposes, as if the same had been formed after the passage of this article; and if the certificate so filed is not deemed sufficient, such incorporators may file such additional certificate as may be necessary to comply substantially with the provisions of this article, and the title to any property which may have been conveyed to such corporation shall be vested therein according to the true intent and purpose for which the same was originally conveyed.

SEC. 298. That the act entitled "An act to provide for the formation of corporations other than those for pecuniary profit," approved February 9, 1876, be, and the same is hereby, repealed: *Provided,* That such repeal shall not affect any incorporation formed under said act prior to the passage of this article.

NOTE.—Act February 21st, 1879.

ARTICLE III.

RAILROAD CORPORATIONS.

Sec. 299. *Who may incorporate.*
Sec. 300. *Certificate of incorporation.*
Sec. 301. *Upon compliance persons to become incorporated.*
Sec. 302. *Authorized to construct a railroad.*
Sec. 303. *Capital stock; how paid.*
Sec. 304. *Sale of stock for unpaid installment.*
Sec. 305. *Subscriptions and elections of directors.*

Sec. 306. *Right of way, etc.*
Sec. 307. *Proceedings to acquire private lands.*
Sec. 308. *How public lands, roads and highways may be appropriated.*
Sec. 309. *Road passing through canon, pass or defile.*
Sec. 310. *Forfeiture of charter upon failure to commence or complete road.*
Sec. 311. *Changes of location or grade.*
Sec. 312. *Power to borrow money, mortgage property and issue bonds.*
Sec. 313. *May acquire and convey land.*
Sec. 314. *May divert road or stream.*
Sec. 315. *May establish and change principal office.*
Sec. 316. *Telegraph lines; provisions of this article shall not apply to certain lands.*
Sec. 317. *Territory or municipality not responsible for liabilities of company.*
Sec. 318. *Liability for injury to employee.*
Sec. 319. *Increase of capital stock.*
Sec. 320. *May accept provisions of act of Congress; legislature may amend this act and regulate same.*
Sec. 321. *Restrictions and penalties.*
Sec. 322. *Annual report to Territorial auditor; what to contain.*

SEC. 299. That any number of natural persons, not less than five, may become a body corporate for the purpose of locating, constructing, maintaining, and operating railroads, with all the rights, privileges and powers conferred by and subject to all the restrictions of this article.

SEC. 300. That any number of persons as aforesaid, associating to form a corporation for the purposes named in section 299 of this article, shall, under their hands and seals, make a certificate, which shall specify as follows:

First. The name of such corporation, by which it shall be known.

Second. The name of the county or counties, and Territory or Territories, where the termini of said road are to be located, and the county or counties, and Territory or Territories, through which such road shall pass, and the general route of said road.

Third. The amount of capital stock necessary to costruct such road.

Such certificate shall be acknowledged before an officer authorized to take acknowledgments of deeds under the laws of this Territory, and a duly certified copy of such certificate shall be filed with and recorded by the county clerk and recorder of the county in which is the principal place of business of said company, and the original shall be filed with and recorded by the secretary of the Territory; a copy of said certificate, duly certified by the secretary of the Territory, under the seal of his office, shall be evidence of the existence of such corporation.

SEC. 301. That when the foregoing provisions have been complied with, the persons named as corporators in said certificate are hereby authorized to carry into effect the objects named in said certificate, in accordance with the provisions of this article; and they, and their associates, successors and assigns, by the name and style provided in said certificate, shall thereafter be deemed a body corporate, with right of succession, with power to sue and to be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey such real and personal estate as may be convenient and necessary to carry into effect the objects of the incorporation, to make and to use a common seal, and the same to alter at pleasure, and to do all needful acts to carry into effect the objects for which it was created; and shall possess all the powers, and be subject to all the rules and restrictions provided by this article.

SEC. 302. That such corporations shall be authorized to locate, construct, maintain and operate a railroad with single or double track, with such side-tracks, turn-outs, machine shops, offices and depots as they may deem necessary between any points they may select within the counties named in the certificate as termini of such road, and they may construct branches to any point in this Territory, and connect or consolidate their road with that belonging to any other person or corporation.

SEC. 303. That the capital stock of such corporation shall consist of such sum as may be named in the certificate, in shares of one hundred dollars each; such shares shall be regarded as personal property, and shall be subject to execution at law. An installment of ten per centum on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in such installments, not exceeding twenty-five per centum on the capital stock; which installments shall not be called for more frequently than once in three months, and shall be payable at the principal office of the corporation, to such persons as may be required by the directors.

SEC. 304. That if any installment of stock shall remain unpaid for sixty days after the time specified for payment thereof, whether such stock is held by the original subscriber, or his assignee, trustee or successor in interest, the directors may sell the stock so unpaid at public auction, for the installment then due thereon, first giving thirty days public notice of the time and place of sale in some newspaper in general circulation in this Territory, and by written notice sent by mail within five days after default made to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his address as last reported by him to the secretary of the corporation; and if any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner: *Provided*, That where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

SEC. 305. That the persons named in said certificate of incorporation, or a majority of them, shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said corporation, at such time or times and at such place or places as they may deem expedient, after having given at least thirty days' notice in a newspaper of general circulation in this Territory, of the time and place of opening books; and as soon as five per centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place as they may designate for the purpose of choosing five or more directors, who shall continue in office until the time fixed for the annual election, which time shall be within six months from the date when such directors were chosen, and until their successors are chosen and qualified; at the time and place appointed directors shall be chosen, by ballot, by such of the stockholders as shall attend for that purpose either in person or by lawful proxies. Each share shall entitle the owner to one vote, and a majority of votes cast shall be necessary for a choice; but after the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on which any installment is in default by reason of the non-payment thereof, after the expiration of the thirty days' notice of sale hereinbefore provided for. The persons named in such certificate, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting, a majority of said directors shall form a board and be competent to fill vacancies in their board, make by-laws, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the by-laws of the corporation may require; and the directors chosen at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and a treasurer of the corporation. The directors before entering upon their duties shall each take an oath or affirmation faithfully to discharge his duties; and they may from time to time make such dividends of the actual net profits of said corporation as they may think proper, and shall hold their offices until their successors are elected and qualified.

Sec. 306. That except as against the United States the right of way through the public lands is hereby granted to any railroad corporation, incorporated under this article, to the extent of one hundred feet in width on each side of the center of such railroad, and the right and authority are hereby given to such corporation to take, from the public lands adjacent to the line of said road, material of earth, stone, timber and water necessary for the construction and maintenance thereof, and it may appropriate the same; and ground for station buildings, workshops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations, is hereby granted to such corporation not to exceed forty acres for every ten miles of road; and said corporation may enter upon premises necessary to be entered upon, to make a survey of the line of its road, paying any actual damages done thereby.

Sec. 307. That for the purpose of securing private lands and premises on the line of such road within this Territory which may be necessary and proper for the construction thereof, such corporation be and is hereby empowered to enter upon, purchase, take and hold any lands and premises that may be necessary for the construction and workings of said road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turn-outs, standing places for cars, depots, station-houses, or any other structures, required in the construction and operating of said road; and such corporation shall have the right to cut and remove trees or other material that might, by falling, incumber its road-bed, though standing or being more than one hundred feet therefrom; and in case the owner or claimant of such lands or premises and such corporation cannot agree as to the damages, the amount shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by any party to any district court or judge thereof, in any of the judicial districts in which the lands or premises to be taken lie; and said commissioners in their assessments of damages shall appraise such premises at what would have been the value thereof if the road had not been built; and upon the return into court of such appraisement, and upon the payment to the clerk thereof the amount so awarded by the commissioners for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said corporation, which shall thereby acquire full title to the same for the purposes aforesaid; and either party feeling aggrieved by said assessment may, within thirty days, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said corporation to enter upon the premises taken, or to do any act necessary in the construction of its road; and said party appealing shall give bonds, with sufficient surety or sureties, for the payment of any costs that may arise upon such appeal, to the district court; and in case the party appealing does not obtain a more favorable verdict, such party shall pay the whole cost incurred by the appellee as well as its own; and if said corporation shall have tendered to the claimant before the commencement of proceedings to ascertain the damage, a sum equal to what said claimant shall finally recover, and upon the appeal before trial shall file with the clerk of said court an offer to confess judgment for that sum, the claimant shall pay the costs. And the payment into court for the use of the owner or claimant of a sum equal to that finally awarded shall be held to vest in said corporation the title of said land and the right to use and occupy the same for the construction, maintaining and operating of the road of said corporation; and in case any of the lands to be taken as aforesaid shall be held by any person residing without the Territory or subject to any legal disability, the court or judge thereof may appoint a proper person, who shall give bonds, with sufficient surety or sureties, for the faithful execution of his trust, and who may represent the parties disqualified or absent as aforesaid, when the same proceedings shall be had in reference to the appraisement of the premises to be taken and with the same effect as has been already described. And the title of the corporation to the lands taken by virtue of this article shall not be affected nor impaired by reason of any failure by any guardian to discharge faithfully his trust; and in case it shall be necessary for such corporations to enter upon any lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purpose of its said railroad and may institute proceedings, in manner described, for the purpose of ascertaining the value of and acquiring a title to the same; and the court or judge thereof may determine the kind of notice to be served on such owner or owners, and may in its discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claim to damages against said corporation shall be barred: *Provided,* That the district court of the district in which the land or premises are situated shall have exclusive jurisdiction in all judicial proceedings had in pursuance of this section and of section 302 aforesaid, subject to the right to change the venue for cause.

SEC. 308. If it shall be necessary in the location of any part of any railroad to occupy any road, street, alley, or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation, or public officer, or public authorities, owning or having charge thereof, and the railroad company to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and if it shall be necessary in the judgment of the directors of such railroad company, to use or occupy such road, street or alley, or other public way or ground, such company may appropriate so much of the same as may be necessary for the purpose of such road in the same manner and upon the same terms as is provided for appropriation of the property of individuals by section 307 of this article: *Provided,* That every railroad company laying down any such track or tracks upon any such public street, road, alley, or other public ground, shall be responsible for injuries done to private property by such location lying upon or near such public ground, which may be recovered by civil action brought by the owner or owners at any time within two years from the completion of such track or tracks, before the proper courts.

SEC. 309. That any such corporation whose right of way, or whose track upon such right of way, extends through any canon, pass or defile, shall not exclude any other such corporation from a passage through the same upon equitable terms; and in case of disagreement upon application of either of the parties with notice to the other, the same shall be adjusted by a court of competent jurisdiction; and if the passage of any such railrord through any canon, pass or defile, causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor as provided by section 307 of this article, and if it shall become necessary for any other railroad company passing through the Territory to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing; and when two or more companies desire to pass through the same canon, pass or defile, neither shall exclude the other from passing through the same, and neither shall have any compensation therefor, except the actual damage done by so doing; and should it be necessary that the said companies should use the same track or bed in passing through such canon, pass or defile, the same may be done without any compensation therefor from one to the other, except the actual damage done by so doing.

SEC. 310. That every railroad corporation organized under the provisions of this article shall be required to commence operations on the line of its road within one year from the filing of its certificate with the secretary of the Territory, and thereafter to grade at least ten miles each year and to complete the whole line of its road within five years from the date of the filing of said certificate; and if it shall fail to comply with any of the requirements of this section it shall forfeit its charter and all the rights and privileges conferred by this article, as to any uncompleted portion of its line of road. Upon the written application of any district attorney of a district through which the line of

* Chap. 30, Act Feb. 21, 1878 — [illegible]

said road would pass, made to the district court, setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause; and if in its judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

SEC. 311. That whenever any corporation organized under this article shall find it necessary, for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves, or grades, or unsafe, or unsubstantial grounds or foundations, or for other reasonable causes, to change the location or grade of any portions of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the certificate of such corporation, and for the purpose of making such change as aforesaid such corporation shall have all the rights, powers and privileges granted by sections 306, 307, and 308 of this article.

SEC. 312. That any corporation organized under this article shall have power to borrow money on the credit of the corporation, to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sums of not less than one hundred dollars, and secure the payment thereof by mortgage of pledge of the property and income of such corporation. And if the said mortgage shall so provide, it shall be and remain a valid lien upon all of the property of said company of whatever kind then existing, or that may thereafter be by it acquired, irrespective of the law now in force relating to chattel mortgages, and the same shall be taken, held and enforced in the same manner as mortgages on real estate now are held and enforced.

SEC. 313. That such corporation may acquire, by purchase or gift, any lands in the vicinity of its road or through which the same may pass, so far as may be convenient or necessary to secure the right of way, or such as may be granted, to aid in the construction of such road, and convey the same in such manner as the directors may prescribe; and all deeds and conveyances made by such corporation shall be signed by the president under the seal of the corporation.

SEC. 314. That it shall be lawful for such corporation, whenever it may be necessary in the construction of such road, to cross any road or stream of water, to divert the same from its present location or bed; but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

SEC. 315. That such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and may change the same at pleasure, giving public notice in one or more newspapers in the Territory having the largest circulation, and notice to the secretary of the Territory of such establishment or change.

SEC. 316. That any such corporation is hereby authorized to construct, maintain and operate a telegraph on the line of the road. The provisions of this article concerning the grant for station buildings, work-shops, depots, machine-shops, switches, side-tracks, turn-tables and water-stations, shall not apply to mineral lands of the United States, or to lands reserved by the United States, nor to any lands as against the United States.

SEC. 317. That nothing in this article shall be construed to make the Territory, or any municipality therein, responsible for any debts or obligations of any character which may be contracted by such corporations.

SEC. 318. That in every case the liability of the corporation to a servant or employee acting under the orders of his superior, shall be the same in case of injury sustained by default or wrongful act of his superior, or to an employee not appointed or controlled by him as if such servant or employee were a passenger.

SEC. 319. If the amount of the capital stock shall be found insufficient to enable said corporation to construct its said road, it shall be competent for the directors, upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of said road.

SEC. 320. The said corporations formed hereunder may, at any time hereafter, accept the provisions of any act of Congress providing for the creation of bodies corporate for the purposes aforesaid, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance, and, having regard to such rights and the legal and equitable rights of the stockholders of any corporation organized hereunder, the legislative assembly of the Territory of Montana, or the legislative department of any State into which said Territory may be formed, and which includes any portion of any road constructed by any corporations formed hereunder, may alter or amend this act, and may regulate the same so as to prevent dangerous rate of speed of trains, extortionate charges, danger to passengers, citizens, and freight, and unjust discriminations by any such corporations.

SEC. 321. If any railroad corporation within this Territory shall ask, charge, or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter, or passenger, or make any unjust discrimination in its rates, or shall give to any member of the legislative, executive or judicial department of the Territory of Montana, any ticket, pass, or privilege other than is given to other patrons of its road generally, or shall neglect to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage, or safe cars for the transportation of express matter and freight, or shall use any highly inflammable oils for lighting any car on its passenger trains, or shall willfully neglect to keep a table of its passenger tariff and rates of freight conspicuously posted in each depot within this Territory, or fail to light its track in any city in this Territory; or shall transport within this Territory on any of its passenger cars, any oil of vitriol, gun-powder, lucifer matches, nitro-glycerine, glynoin oil, nitroleum or blasting oil, or nitrated oil, or powder mixed with any such oil or fibre saturated therewith, or duolin or giant powder, or blasting powder, or any other goods of a dangerous nature, or in any incorporated town in this Territory run any train at a rate of speed forbidden by the laws of the Territory or the ordinances of such city, or run any train over any unsafe bridge, trestle-work, or acqueduct in this Territory; or fail to have upon any locomotive in use by it in this Territory a bell and steam whistle in fit condition for use thereon; or shall approach any highway, road, or railroad crossing without having, at a distance of fifty rods therefrom and within a distance of eighty rods therefrom, sounded said whistle and rang said bell; or shall cross any railroad without bringing its train to a full stop, or shall willfully fail to make any report herein required, or which may be hereafter required by any law of this Territory, shall be deemed guilty of a misdemeanor, and, being thereof convicted, shall be fined for the first offence in the sum of one thousand dollars, and for the second violation of the same provision two thousand dollars, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than five nor more than ten thousand dollars.

SEC. 322. It is hereby made the duty of the president or other officer in charge of each and every railroad company having a line of railroads in the Territory of Montana, to make an annual report to the auditor for the year ending on the 30th day of November preceding, which report shall be verified by the oath or affirmation of such president or other officer in charge, and be filed in the office of the auditor by the first day of December in each year, and shall state:

1st. The amount of capital stock paid in.

2d. The amount of capital stock unpaid.

3d. The amount of funded debt.

4th. The amount of floating debt.

5th. Cost of construction.

6th. Cost of right of way.

7th. Cost of equipment.

8th. All other items embraced in cost of road and equipments not embraced in three preceding questions.

Total cost of road and equipments to date.

9th. Length of single main track, laid with iron.

10th. Length of double main track, and width of gauge.

11th. Length of branches, stating whether they have single or double tracks.

12th. Aggregate length of sidings, and other tracks not above enumerated.

Total length of iron embraced in preceding heads.

13th. The maximum grade, with its length in main road, and also in branches.

14th. The shortest radius of curvature, with length of curve in main road and also in branches.

15th. Total degrees of curvature in main road, and also in branches.

16th. Total length of straight line in main road, and also in branches.

17th. Number of wooden bridges, and aggregate length in feet.

18th. Number of iron bridges, and aggregate length in feet.

19th. Number of stone bridges, and aggregate length in feet.

20th. The number of wooden trestles, and aggregate length in feet.

21st. The greatest age of wooden bridges.

22d. The average age of wooden bridges.

23d. The greatest age of wooden trestles.

24th. The number and kind of new bridges built during the year, and length in feet.

25th. The length of road unfenced on either side, and the reason therefor.

26th. Number of engines.

27th. Number of passenger cars.

28th. Number of express and baggage cars.

29th. Number of freight cars.

30th. Number of other cars.

31st. The highest rate of speed allowed by express passenger trains when in motion.

32d. The highest rate of speed allowed by mail and accommodation trains when in motion.

33d. The highest rate of speed allowed by freight trains when in motion.

34th. The rate of fare for passengers charged for the respective classes per mile.

35th. The highest rate per ton per mile charged for the transportation of the various classes of freight, through and local.

36th. The length of new iron laid during the year.

37th. The length of re-rolled iron laid during the year.

38th. The number of miles run by passenger trains.

39th. The number of miles run by freight trains.

40th. The number of passengers (all classes) carried in cars.

41st. The number of tons of through freight carried.

42d. The number of tons of local freight carried.

43d. The number of tons of ore, cattle, and grain transported.

44th. The value of coin, bullion, and dust carried.

45th. From transportation of passengers.

46th. From transportation of freight.

47th. From mail and express.

48th. From all sources.

Total earnings for the year.

49th. For construction and new equipments.

50th. From maintenance of way and structure.

51st. From maintaining and operating motive power and cars.

52d. For transportation expenses, including those of stations and trains.

53d. For dividends, rate per cent., and amount.

54th. All other expenditures, either for management of road, maintenance of way, motive power and cars, and for other purposes.

Total expenditure during the year.

55th. The number and kind of farm animals killed, and the amount of damages paid therefor.

56th. A statement of all casualties resulting in injuries to persons, and the extent and causes thereof, and such other and further information as may be required by the auditor, but if any company shall be unable to furnish the required information, the reason thereof shall be given.

The auditor shall prepare and furnish to each railroad company, or to each organization having one or more railroads in charge, blank forms for making the reports required by this article, which blanks may be so prepared by the auditor as to obtain the information required by the foregoing inquiries more in detail, or omit such of a historical or permanent character as may have been given in previous report.

NOTE.—Act of May 7th, 1873.

CHAPTER XVI.

COUNTIES.

ARTICLE I.

COUNTY BOUNDARIES.

Sec. 323. *Missoula county.*
Sec. 324. *Deer Lodge county.*
Sec. 325. *Beaver Head county.*
Sec. 326. *Madison county.*
Sec. 327. *Jefferson county.*
Sec. 328. *Lewis and Clarke county.*
Sec. 329. *Meagher county.*
Sec. 330. *Gallatin county.*
Sec. 331. *Choteau county.*
Sec. 332. *Dawson county.*
Sec. 333. *Custer county.*
Sec. 334. *County attached for judicial purposes.*

SEC. 323. That all that portion of Montana Territory embraced within the following boundaries shall be known as Missoula county, to wit: Commencing at the point of intersection of the parallel of forty-nine degrees, with the line of longitude, one hundred and sixteen degrees; thence along the said line of longitude south to the summit of the Bitter Root mountains, and along the summit of the Bitter Root mountains in a southerly direction to the summit of the Rocky mountains, and along the said summit of the Rocky mountains to the head waters of the middle branch of Stony creek; thence down the centre of the said creek to Hell Gate river; thence up the centre of the said Hell Gate river, to a point known as Medicine (Tree) Hill; thence due north to the parallel forty-nine degrees, and along the said parallel of latitude to the place of beginning.

NOTE.—Act of January 12th, 1872.

SEC. 324. That all that portion of the Territory of Montana embraced in the following described boundaries shall be known as the county of Deer Lodge, to-wit: Commencing in the middle of Hell Gate river at a point directly opposite the most northerly point of the Medicine Tree hill; thence down the middle of said river to the mouth of Stony creek; thence up the middle of said creek to the middle branch of said creek; thence up the said middle branch of Stony creek to the summit of the Rocky mountains; thence in a southerly direction to the nearest stream of water that empties into the Big Hole river; thence down said stream to the Big Hole river; thence down the middle of said river to the mouth of Camp creek; thence up Camp creek to its right hand fork; thence up said fork to its source; thence in a direct line to the centre of the summit of Table mountain; thence in a direct line to Parson's bridge on the Jefferson river; thence westerly along Parson's toll road leading from said bridge to Butte City, to the point where said road crosses Fish creek; thence up said Fish creek to the base of the mountains; thence in a northerly direction to the summit of the main range of the Rocky mountains; thence along the summit of said mountains in a northerly direction to a point directly north of Medicine Tree hill; thence due south to the place of beginning in the middle of the Hell Gate river, opposite Medicine Tree hill.

NOTE—Act of February 5th, 1876.

SEC. 325. All that portion of Montana Territory embraced within the following boundaries be and the same is hereby created a county to to be known as Beaver Head county, to-wit: Commencing at a point known as the Beaver Head Rock; thence due south to the Territorial line; thence along the southerly boundary of the Territory following the Territorial line to the first point thereon, where the southerly boundary line of Missoula county strikes the same; thence along the southern boundary line of Missoula county in an easterly direction to the point where the said line of Missoula county strikes the westerly boundary line of Deer Lodge county; thence along the southwesterly boundary line of Deer Lodge county to the Big Hole river; thence down the center of the Big Hole river to the point where the westerly line of Madison county strikes the same; thence along the westerly line of Madison county to the place of beginning. The county seat of the said Beaver Head county is hereby located at Bannack City, in said county.

NOTE.—See "additional territory, second" next section.

SEC. 326. All that portion of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county which shall be known as Madison county, to-wit: Commencing at the Beaver Head Rock on Beaver Head river; thence in a right line in a northwesterly direction to the nearest point on Big Hole river; thence up said river to the mouth of Camp creek; thence up Camp creek to the right hand fork thereof; thence up the said right hand fork to its source; thence in a right line to the summit of Table mountain; thence in a direct line to Parson's bridge, on the Jefferson river; thence down the middle of the main channel of the Jefferson river to a point in said river opposite to where the Boulder river puts into the Jefferson river; thence in a right line in a southeasterly direction to the mouth of Big Canon, on Willow creek; thence in a right line in an easterly direction to Foreman's crossing of the Madison river; thence in a right line east to the top of the main range or ridge of the mountains dividing the waters of the Gallatin and Madson rivers; thence south to the Territorial line; thence west along said line to a point where the southeast corner of Beaver Head county strikes said Territorial line; thence along the eastern boundary line of Beaver Head county in a northerly direction to the place of beginning; and that the county seat of Madison county is hereby located at Virginia City, in said county.

NOTE.—Act of January 12th, 1872.

ADDITIONAL TERRITORY.

First. That, that portion of the public domain that is described in the Act of Congress, approved February 17, 1873, entitled, "An act to re-adjust the western boundary of Dakota Territory," lying east of an extension due south of the line dividing the counties of Madison and Beaver Head, be, and the same is hereby, attached to and shall hereafter comprise a portion of the county of Madison.

Second. That all the remaining portion of said public domain, lying west of said line, be, and the same is hereby, attached to and shall hereafter comprise a portion of the county of Beaver Head.

NOTE.—Act of February 7th, 1874.

SEC. 327. That all that portion of the Territory of Montana embraced within the following boundaries be, and the same is hereby, created a county known as Jefferson county, to-wit: Commencing at the southeast corner of Lewis and Clarke county, on the Missouri river; thence up said Missouri river to the mouth of Jefferson river; thence up said Jefferson river to the "Parson's bridge" across said river; thence westerly along Parson's toll road (leading from said bridge to Butte City), to the point where said road crosses Fish creek; thence up said Fish creek to the base of the mountains; thence northerly to the summit of the main Rocky mountain range; thence along said Rocky range to the Bald mountains, at the head of Ten Mile creek, or the eastern boundary of Lewis and Clarke county; thence easterly along said boundary line to the place of beginning.

SEC. 489. That all that portion of the Territory of Montana embraced within the following boundaries be, and the same is hereby, declared to be Lewis and Clarke county, to-wit: Commencing at a point in the Missouri river opposite the mouth of Sun river; thence up said Sun river and the most northerly branch thereof, that heads in the Rocky mountains, to the crest of said Rocky mountains; thence southerly along the crest of said Rocky mountains to the head of Ten Mile creek; thence along the divide between Ten Mile creek and the waters of North Boulder to the divide between the waters of Lump Gulch and Ten Mile creek; thence along the said divide to the divide between the waters of Grizzly Gulch and Lump Gulch; thence along the said divide to the divide between the waters that come into Dry Gulch above Helena, and the waters of the Prickly Pear creek to the north peak of the mountains easterly from Helena, known as Dry Gulch mountains; thence due east to the Missouri river; thence down the middle of the broadest channel of said Missouri river to the place of beginning. That the county seat of the said Lewis and Clarke county be, and the same is hereby, located at Helena City, Lewis and Clarke county, Montana Territory.

NOTE.—Act of January 12th, 1872.

SEC. 329. That all of that part of Montana Territory embraced within the following boundaries be, and the same is hereby, declared to be Meagher county, to-wit: Commencing in the middle of the main channel of the Missouri river, opposite the mouth of Sixteen Mile creek; thence easterly along the centre of the main channel of said Sixteen Mile creek, four miles; thence north to the northern boundary of Gallatin county; thence due east along said line to the one hundred and ninth parallel of longitude; thence due north along the one hundred and ninth parallel of longitude to the middle of the main channel of the Muscleshell river; thence down the middle of the main channel of the Muscleshell river to a point due east of the mouth of Smith's river; thence due west along the southern boundary line of Choteau county to the middle of the main channel of the Missouri river, opposite the mouth of Smith's river; thence up the middle of the main channel of the Missouri river to the place of beginning.

NOTE.—Act of February 9th, 1876.

SEC. 330. All that part of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county to be known as Gallatin county, to-wit: Commencing at the southeast corner of Meagher county, on the one hundred and ninth parallel of longitude; thence south along said parallel of longitude to a point in the middle of the Yellowstone river; thence up the middle of the Yellowstone river to the point where it is crossed by the forty-fifth parallel of latitude; thence west along said forty-fifth parallel to the one hundred and eleventh parallel of longitude; thence south along the one hundred and eleventh parallel to the summit of the Rocky mountains; thence westerly along the summit of the Rocky mountains to the southeastern corner of Madison county; thence northerly along the eastern line of Madison county to where it strikes Jefferson river; thence down the middle of Jefferson river to its mouth; thence down the middle of the Missouri river to a point opposite to the mouth of Crow creek; thence due east to the place of beginning, on the one hundred and ninth parallel of longitude.

NOTE.—Act January 12th, 1872.

AMENDMENT.—That the northern boundary of Gallatin county shall be as follows, to wit: Commencing at a point in the middle of the Missouri river, opposite the mouth of Sixteen Mile creek; thence easterly up the main channel of said Sixteen Mile creek, four miles; thence north to the south boundary of Meagher county; and thence due east along said line to the one hundred and ninth parallel of longitude.

NOTE.—Act February 13th, 1874.

SEC. 331. That all that portion of the Territory of Montana, embraced in the following described boundaries, shall be known as the county of Choteau, to wit: Commencing at a point in the middle of the main channel of the Missouri river, opposite to the mouth of Deep creek; thence due east to intersect with the one hundred and eighth meridian of longitude; thence due north along the one hundred and eighth meridian of longitude to the intersection of the forty-ninth parallel of latitude; thence due west along the forty-ninth parallel of latitude, to a point directly north of Medicine Tree hill; thence due south to the summit of the main range of the Rocky mountains; thence along the summit of said mountains in a southerly direction to the head of the most northerly branch of Sun river, that heads in the Rocky mountains; thence in an easterly direction down the middle of said branch of Sun river to its mouth; thence down the middle of the main channel of the Sun river to the middle of the main channel of the Missouri river; thence up the middle of the main channel of the Missouri river to the place of beginning.

NOTE.—Act February 5th, 1876.

SEC. 332. That all that part of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county, to be known as Dawson county, to wit: Commencing at the intersect-ing point of parallel of latitude forty-seven degrees, with meridian of longitude one hundred and eight degrees, and thence along said parallel forty-seven degrees, to meridian of longitude one hundred and four degrees, and from thence along said meridian north to forty-ninth parallel of latitude, and from thence along said parallel forty-nine degrees, to meridian of longitude one hundred and eight degrees; and from thence south along said meridian to place of beginning.

SEC. 333. That all the remaining portion of the Territory of Montana not included in the counties before named in this article be, and the same is hereby, created a county, to be known as Custer county.

NOTE.—Acts of January 12th, 1872, and February 16th, 1877.

SEC. 334. That the county of Choteau be, and is hereby, attached to the county of Lewis and Clarke for judicial puposes; and the county of Dawson be, and is hereby, attached to the county of Meagher, for judicial purposes.

NOTE.—Acts of January 4th, 1872, and February 16th, 1877.

ARTICLE II.

COUNTY OFFICERS AND POWERS OF COUNTIES.

Sec. 335. *Each organized county to be a body corporate and politic.*
Sec. 336. *Real estate conveyed to county to be property of county.*
Sec. 337. *Powers exercised by county commissioners.*
Sec. 338. *Each county to provide county buildings.*
Sec. 339. *Title of suit for and against county.*
Sec. 340. *Services of processes to be on county clerk, and clerk to notify county attorney.*
Sec. 341. *Who are competent witnesses and jurors.*
Sec. 342. *How and when execution may issue on judgment.*
Sec. 343. *Board of county commissioners to consist of three qualified electors.*
Sec. 344. *How and when commissioners elected.*
Sec. 345. *How long and when board of commissioners to sit.*
Sec. 346. *Commissioners to take oath.*
Sec. 347. *To be paid ten dollars per day and mileage.*
Sec. 348. *Powers of commissioners.*
Sec. 349. *On what conditions to borrow money.*
Sec. 350. *Notice of loan to be posted.*
Sec. 351. *How and when vote on loan taken.*
Sec. 352. *Not to organize new township without petition.*
Sec. 353. *To alter or change township organization on petition of majority of voters.*
Sec. 354. *Board to have seal or scroll, and to sit with open doors.*
Sec. 355. *To choose a chairman.*
Sec. 356. *Chairman to administer oath and sign county warrants.*
Sec. 357. *How accounts made and allowed.*
Sec. 358. *How county orders signed.*
Sec. 359. *Appeal may be taken to district court from decision of county commissioners.*

Sec. 360. *How appeal tried in district court.*
Sec. 361. *Board to furnish blanks to assessor.*
Sec. 362. *Board to examine orders returned by treasurer.*
Sec. 363. *Board to have published account of receipts and expenditures.*
Sec. 364. *Penalty for refusing to perform duty.*
Sec. 365. *To cause plat of new township or alteration to be made and recorded.*
Sec. 366. *Duties of clerk of board.*
Sec. 367. *Clerk to designate amount of account, and deliver to any person certified copy or record.*
Sec. 368. *Clerk not to issue county order unless ordered by board.*
Sec. 369. *Clerk to transmit to secretary of the Territory names and boundaries of townships.*
Sec. 370. *Clerk to receive a reasonable compensation.*
Sec. 371. *County commissioners may transfer funds from one fund to another.*
Sec. 372. *Bond of county commissioner.*
Sec. 373. *Judicial and other powers of county commissioners.*
Sec. 374. *Annual financial statement of the county.*
Sec. 375. *Statement in duplicate; to be recorded and published.*
Sec. 376. *Sinking fund.*
Sec. 377. *Contingent fund.*
Sec. 378. *Surplus paid on warrants.*
Sec. 379. *Balance certificates not to be issued.*
Sec. 380. *Stated and special meetings of board.*
Sec. 381. *Acts repealed.*

SEC. 335. That each organized county within this Territory shall be a body corporate and politic, and, as such, shall be empowered for the following purposes:

First. To sue and be sued.

Second. To purchase and hold real and personal estate for the use of the county, and lands sold for taxes, as provided by law.

Third. To sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants.

Fourth. To make all contracts, and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers.

Fifth. To exercise such other and further powers as may be especially conferred by law.

SEC. 336. Any real or personal estate heretofore, or which may be hereafter, conveyed to any county, shall be deemed the property of such county.

SEC. 337. The powers of the county as a body corporate and politic shall be exercised by a board of county commissioners therefor.

SEC. 338. Each county organized for judicial purposes shall, at its own expense, provide a suitable court house and a sufficient jail, and other necessary county buildings, and keep them in repair.

SEC. 339. In all suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be, the board of commissioners of the county of ——— (the name of the county), but this provision shall not prevent county officers, when authorized by law, from suing in their name of office, for the benefit of the county.

SEC. 340. In all legal proceedings against the county, process shall be served on the clerk of the board of county commissioners; and whenever such suit or proceedings shall be commenced, it shall be the duty of the clerk forthwith to notify the county attorney thereof, and to lay before the board of county commissioners, at their next meeting, all the information he may have in regard to such suit or proceeding.

SEC. 341. On the trial of any suit in which the county may be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent and qualified according to law.

SEC. 342. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him in his name of office, when the same shall be paid by the county, no execution shall issue upon said judgment; but the same shall be levied and paid by tax or other county charges; and when so collected shall be paid by the county treasurer to the proper person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor: *Provided,* That execution may issue on said judgment if payment be not made within sixty days after the time required for the payment of county taxes to the county treasurer, by the proper officers of said county in each year.

SEC. 343. The board of county commissioners shall consist of three qualified electors, any two of whom shall be competent to transact business, who shall be elected according to law.

SEC. 344. At the general election to be held on the 7th day of November, A. D. 1878, there shall be elected a board of county commissioners composed of three members. The person having the highest number of votes shall continue in office for six years; the next highest, four years; the next highest, two years; and biennially thereafter one commissioner shall be elected and continue in office six years: *Provided,* That county commissioners whose term of office shall expire in 1877, shall continue in office until their successors are elected and qualified. On every election hereafter of county commissioners of any county, where more than one commissioner is to be elected, the person receiving the highest number of votes shall be held and considered elected for the longest term of office to be filled at such elections; the person receiving the second highest number of votes shall be held and considered elected for the second longest term; and the person receiving the third largest number, for the shortest term; but if two or more persons have the same number of votes, then their terms shall be determined by lot, under the direction of the board of canvassers returning the election.

NOTE.—The preceding section is from Act of February 15th, 1877.

SEC. 345. Said board of county commissioners shall meet the first Monday of March, June, September, and December, of each year, and may sit not exceeding four days at each term; and the said board may, at any time, by giving at least five days' public notice, call an extra session, of not more than two days' duration.

SEC. 346. Each person elected as such commissioner shall, on receiving a certificate of his election, take an oath to support the Constitution of the United States and the organic act of this Territory, and to perform the duties of his office to the best of his ability, which oath being endorsed upon said certificate, under the hand and seal of the person administering it, shall be sufficient for said person to act as said commissioner.

SEC. 347. Each member of the board of county commissioners shall be paid by the county ten cents per mile for the distance necessarily traveled in going to, and returning from, the county seat, and six dollars per day, out of the contingent fund of the several counties, for each day while in actual session, and no other compensation shall be allowed.

NOTE.—Act January 19th, 1876.

SEC. 348. The board of county commissioners of each county shall have power at any meeting:

First. To make such orders concerning the property belonging to the county as they may deem expedient.

Second. To examine and settle all accounts of the receipts and expenses of the county, and to examine, settle, and allow all accounts chargeable against the county; and, when so settled, they may issue county orders therefor as provided by law.

Third. To build and keep in repair county buildings, and cause the same to be insured in the name of the county treasurer for the benefit of the county, and, in case there be no county buildings, to provide suitable rooms for county purposes.

Fourth. Apportion and order the levying of taxes, as provided by law, and to borrow money upon the credit of the county, a sum sufficient for the erection of county buildings, or to meet the current expenses of the county, in case of a deficit in the county revenue.

Fifth. To represent the county, and have the care of the county property, and the management of the business and concerns of the county in all cases where no other provision is made by law.

Sixth. To set off, organize, and change the boundaries of townships in their respective counties, designate and give names to them, and to fix the time and place of holding the first election therein.

Seventh. To establish one or more election precincts in any township, as the convenience of the inhabitants may require.

Eighth. To lay out, alter, or discontinue any road running through one or more townships in such county, and to perform such other duties respecting roads as may be required by law.

Ninth. To grant licenses for keeping ferries in their respective counties, and such other licenses as may be prescribed by law.

Tenth. To set aside a sum of not less than one, nor more than twenty-five per cent. of the county fund annually, which shall be known as the contingent fund, to defray incidental expenses of the county, and if a surplus of said contingent fund so set aside remain, it shall be paid out on registered warrants, as other county funds are, at the expiration of each quarterly settlement.

Eleventh. To perform such other duties as are or may be prescribed by law.

SEC. 349. The board of county commissioners shall not borrow money for the purpose specified in the fourth subdivision of section 348 of this article, without having first submitted the question of such loan to a vote of the electors of the county.

SEC. 350. [1]Whenever it shall become necessary, under the provisions of this article, to submit to a vote of the electors of any county the question of raising any sum of money by a loan, the said board, after having determined the sum necessary to be raised, shall cause notice of such determination, and of the time when the question will be submitted to the electors of the county, by written or printed handbills, posted up in five of the most public places in each township, for at least thirty days previous to the time fixed for taking such vote.

SEC. 351. At the time specified in such notice, a vote of the electors of such county shall be taken at the place designated in the notice. The inspectors receiving the vote shall be the same as required at the general election, and the vote shall be canvassed by the same officers, and in the same manner, as required at such general election, and the result of such vote shall be certified by them, and transmitted to the county clerk, within ten days after such vote shall be taken, which certified statement shall be delivered by said clerk to the board of county commissioners at their next meeting. All voting in the several townships, as provided in this section, shall be by ballot, and those voting in favor of such proposed loan shall have written or printed on their ballots, "*For the loan,*" and those voting against the loan shall have written or printed on their ballots, "*Against the loan;*" and, if a majority of the votes cast at such election shall be "against the loan," it shall not be made.

SEC. 352. The board of county commissioners shall not set off or organize any new township unless a petition be first presented to the board, signed by at least fifty citizens, resident therein.

SEC. 353. The board of county commissioners shall alter and change the township organization of their county so as to agree with the standard fixed in the preceding sections in respect to the territory and population, if such change be desired by the citizens of the county, on a petition of a majority of legal voters being presented to the board of county commissioners.

SEC. 354. Every board of county commissioners shall have a seal, or scroll until a seal can be procured, and may alter the same at pleasure. They shall sit with open doors, and all persons conducting themselves in an orderly manner may attend their meetings; and they may establish rules and regulations to govern the transactions of their business.

SEC. 355. They shall, at the first meeting after their election, and after every annual election, choose one of their number chairman, who shall preside at such meeting, and all other meetings during the year, if present; but in case of his absence from any such meeting, the members present shall choose one of their number as tempory chairman.

SEC. 356. The chairman of said board shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties, and he shall sign all county orders.

SEC. 357. No account shall be allowed by the board of county commissioners, unless the same be made out in separate items, and the nature of each item stated; nor unless the same be verified by affidavit, showing that the said account is just and wholly unpaid; and if the same be for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service shall be stated; but nothing in this section shall prevent such board from disallowing any account in whole or in part, when so rendered and certified.

NOTE.—Act February 13th, 1874.

SEC. 358. County orders shall be signed by the chairman and attested by the clerk, and shall specify the nature of the claim or service for which they were issued.

NOTE.—Act January 12th, 1872.

SEC. 359. Whenever a claim of any person against a county shall be disallowed in whole or in part, or when any tax-payer of the county shall feel aggrieved by any allowance made by the board as excessive, unjust to the county, or illegal, such person may appeal from the decision of such board to the district court, for the county, by causing a written notice of such appeal to be served on the clerk of such board, within thirty days after the making of such decision or allowance, and executing a bond to such county, with surety to be approved by the clerk of such board, conditioned to prosecute such appeal to effect, and to pay all costs that shall be adjudged against the appellant.

NOTE.—Act February 13th, 1874.

SEC. 360. The clerk of the board, upon such an appeal being taken shall immediately give notice thereof to the county attorney, and shall make out a brief return of the proceedings in the case before the board, with their decision thereon. and shall file the same, together with the bond and all the papers in the case, in his possession, with the clerk of the district court; and such appeal shall be entered, tried and determined, the same as appeals from justices' courts, and costs shall be awarded in like manner.

SEC. 361. The board of commissioners of their respective counties, shall, at the expense of the county, furnish annually and in due season, to the assessor of the county, suitable blank assessment rolls for the several townships, prepared in accordance with the provisions of law, and shall also provide suitable books and stationery for the use of the county officers of their county, together with appropriate cases and furniture for the safe and convenient keeping of all the books, documents, and papers belonging to each of said officers, and also official seals for each of said officers, when the same are required by law.

SEC. 362. The board of county commissioners at their annual March session, or oftner if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on said record, opposite to the entry of each order issued, the date when the same was cancelled; they shall also make a list of the orders so cancelled, specifying the number, date, amount, and the person to whom the same was payable, and enter the same on the journal of the board. They shall also cause to be cancelled all county orders that have remained one year or more uncalled for in the county clerk's office, the same to be cancelled in the same manner as other county orders. Also, at the same time, the county treasurer shall deliver over to the board of county commissioners, all warrants or vouchers that he may have in his possession, for moneys disbursed by him as such treasurer, and the county commissioners shall receipt for the same, and make out and sign a list thereof, specifying the number, date, and amount of warrant or voucher, to whom payable, and where paid or cancelled, and the county clerk shall record the same in the journal of the board.

NOTE.—Act February 13th, 1874.

SEC. 363. The boards of commissioners of their respective counties shall cause to be made and published, yearly, in at least one newspaper in the county, if such there be, a report of receipts and expenditures of the year last preceding, and the amounts allowed; but if there be no newspaper printed in said county, their statement shall be posted in at least five public places in said county.

SEC. 364. If any commissioner shall refuse or neglect to perform any of the duties which are or shall be required of him by law as a member of the board of county commissioners, without just cause therefor, he shall, for each offence, forfeit a sum not less than twenty-five dollars, nor more than one hundred dollars.

SEC. 365. Whenever any board of commissioners shall organize new townships, or alter the boundaries of any townships in their counties, they shall cause a plat and record thereof to be made by their clerk, specifying the name and boundaries of such township, which plat and record shall be kept in the office of said clerk, and a copy thereof, under the seal of said board, shall be made by said clerk and filed with the proper officer of said township.

SEC. 366. It shall be the general duty of the clerk of the board of commissioners:

First. To record, in a book to be provided for that purpose, all proceedings of the board.

Second. To make regular entries of all their resolutions and decisions, in all questions concerning the raising of money.

Third. To record the vote of each commissioner on any question submitted to the board, if required by any member.

Fourth. Sign all orders issued by the board for the payment of money, and to record, in a book to be provided for that purpose, the receipts and expenditures of the county treasurer of the county.

Fifth. To preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required by law.

SEC. 367. It shall be the duty of such clerk to designate, upon every account which shall be audited and allowed by the board, the amount so allowed; and he shall also deliver to any person who may demand it, a certified copy of any record in his office, or any account on file therein, on receiving from such person twenty-five cents for every folio contained in such copy.

SEC. 368. Such clerk shall not sign or issue any county orders unless ordered by the board of commissioners authorizing the same; and every such order shall be numbered, and the date, amount, and number of the same, and the name of the person to whom it is issued shall be entered in a book to be kept by him in his office for that purpose.

SEC. 369. The said clerk of each county shall, as often as a new township shall be organized in his county, or the boundaries of any township therein shall be altered, and immediately thereafter, make out and transmit to the secretary of the Territory, a certified statement of the names and boundaries so organized, and the boundaries of any township, the boundaries of which shall have been altered.

SEC. 370. Such clerk shall receive a reasonable compensation for such service as he may perform as clerk of the board; when no specified fees are allowed therefor, the same to be allowed by the board and paid by the county.

NOTE.—The preceding sections of this Article, except where otherwise specially noted, are from the Act of January 12th, 1872.

SEC. 371. The county commissioners of the several counties are hereby authorized to transfer all surplus moneys that may be on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interests of their respective counties, or to appropriate said surplus moneys to the payment of the outstanding indebtedness of their respective counties: *Provided*, That no moneys belonging to the school fund shall be taken therefrom, except for school purposes.

NOTE.—Act January 24th, 1876.

SEC. 372. Each person elected to the office of county commissioner of any county in this Territory shall, before he enter upon the duties of his office, execute and file with the probate judge of the county, a bond, with two or more sufficient sureties, in the penal sum of not less than three thousand dollars, to be fixed and approved by the judge of the probate court, conditioned for the faithful discharge of his duties as such commissioner.

SEC. 373. It shall be the duty of the county commissioners, in addition to the duties herein prescribed by law, to audit, adjust, and settle all accounts to which the county shall be a party; to order the payment, out of the county treasury, of any sum of money found to be due by the county; to enforce the collection of all moneys due the county; to order suit to be brought on the bond of any delinquent, and require the district and county attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they may deem necessary to examine, in the investigation of any account or claim against the county; and if any such person, being served with such summons, shall not appear, according to the command thereof, the said board of county commissioners may compel his appearance by attachment; and, in order to procure the exhibition or delivery to them of any accounts, books, documents, or other papers, the said board of county commissioners may issue a summons directed to the person in whose custody or care the said accounts, books, documents, or other papers may be, commanding him to deliver or transmit the same to the said board of county commissioners, which summons shall be served by the sheriff; and if the person named in such summons refuse to appear with, or transmit the accounts, books, documents, or other papers, or show good cause why he does not, at the time appointed for his appearance, the said board of county commissioners may enforce the delivery thereof by attachment; and the said board of county commissioners may examine all parties and witnesses, on oath, touching the investigation of any accounts, and may commit to jail any who shall refuse to answer any lawful question.

SEC. 374. It shall be the duties of the several boards of county commissioners transacting county business in the several counties of this Territory, at the regular spring term of their respective sessions in each year, to make out a full and complete statement of the amount of debt due by their counties, and a detailed account of the receipts and expenditues of the same for the preceding year, showing from what officer received, and to what individuals, and on what account any money has been paid; and shall strike a balance showing a deficiency, if any, and the balance in the treasury, if any.

SEC. 375. The facts thus ascertained, and the accounts and statements thus made out, shall be made out in duplicate, one copy of which shall be filed in the office of the county treasurer and one copy sent to the Territorial auditor. Said statement shall also be recorded in full in the journal of the proceedings of the board of county commissioners, and shall be published in some newspaper in each county for one week: *Provided*, If there be no newspaper published in the county, then in some newspaper published in the Territory, to be designated by the commissioners, which would be most likely to give notice to the people of the county.

NOTE.—Last four preceding sections are from Act of January 9th, 1872.

SEC. 376. The county commissioners of the different counties of this Territory may set apart, from the county, part of the revenue of their respective counties, a certain sum, annually, for the payment of the outstanding county bonds and the interest thereon: *Provided*, That the sum so set apart shall not exceed seven mills of the number of mills levied for county tax. Said fund shall be known as the sinking fund to pay said bonds and interest, and which bonds shall be paid in the order in which they were issued, and whenever a sufficient sum shall have accumulated in said sinking fund to pay any bond, over and above the sum required to pay the annual interest on the outstanding bonds, it shall be the duty of the treasurer to post upon the door of his office a notice, that there is money in his hands to pay such bond, designating it by the number, date, amount, and the name of the payee, and from the date of such notice the interest of such bond or bonds shall cease, and it shall be the duty of the treasurer to file a true copy of such notice in the office of the clerk of his county, and the clerk shall file and preserve the same in his office, which notice, or a duly authenticated copy thereof, shall be *prima facie* evidence of such filing.

NOTE.—Act February 5th, 1876.

SEC. 377. The county commissioners of each county in the Territory are hereby authorized to annually set apart a sum, not exceeding three mills of the number of mills levied for county tax, which shall be known as the contingent fund, and shall be used to defray the incidental expenses of the county.

SEC. 378. If a surplus of the contingent fund, set apart in section 377, remain on hand at the end of the year, said surplus shall be paid out on registered county warrants, and in the same manner as other county funds.

Sec. 379. All county clerks are hereby expressly forbidden to issue any county warrant to any person, for any balance due such person on any county warrant paid to the treasurer for taxes.

Sec. 380. The board of county commissioners of the several counties of this Territory, shall meet at the county seat of their respective counties, on the first Monday in the months of December, March, June and September of each year, and may sit not exceeding four days at each term, except the December term, at which they may sit not exceeding eight days; but said boards may at any time, by giving at least five days' public notice, call an extra session of not over two days' duration.

Sec. 381. The following acts and parts of acts, be, and the same are hereby, repealed, as follows: Sec. 11 of "An act relating to counties and county officers," on folio five hundred of the statutes of eighteen hundred and sixty-four and eighteen hundred and sixty-five; section three of "An act to authorize the county commissioners of the several counties of the Territory of Montana to fund the debt of their respective counties," on folio two hundred and thirty-four, of the statutes of eighteen hundred and sixty-seven; an act amendatory of an act, entitled "An act relating to counties and county officers," on folios ninety and ninety-one of the statutes of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine; an act to amend an act amendatory of an act, entitled "An act relating to counties and county officers," on folio sixty-nine of the statutes of eighteen hundred and seventy; an act, amendatory of an act, entitled "An act relating to counties and county officers," on folio seventy-one of the statutes of eighteen hundred and seventy.

Note.—Sections 377 to 381, both inclusive, are from Act of January 12th, 1872.

ARTICLE III.

PROBATE JUDGE.

Sec. 382. *Probate judge in each county hold office two years, execute bond, etc.*

Sec. 383. *Probate judge to keep records; records to be kept open; fees, etc.*

Sec. 382. There shall be elected in each county a probate judge, who shall hold his office for two years, and who shall, before he enter upon the duties of his office, execute to the Territory of Montana, a bond, in the penal sum of five thousand dollars, with two or more sufficient securities, to be approved by the county treasurer, and filed in his office, conditioned for the faithful performance of the duties required of him by law, and for the faithful application and payment of all moneys and effects that may come into his hands in the execution of the duties of his office.

Sec. 383. The probate judge shall keep a record of all probate business done by or before him, which record shall be open to the inspection of all persons without charge, and he shall receive such fees as are by law allowed him for probate business, and such other compensation as the board of county commissioners may determine: *Provided*, That nothing shall be paid by the county, if the fees and official compensation of such judge shall amount to five hundred dollars per annum.

ARTICLE IV.

COUNTY CLERK.

Sec. 384. *County clerk to be elected and give bond.*
Sec. 385. *To be clerk of board of county commissioners and ex-officio county auditor.*
Sec. 386. *Clerk to appoint deputy.*
Sec. 387. *Clerk to keep office at county seat; keep record, etc.*
Sec. 388. *County commissioners to appoint clerk to fill vacancy.*
Sec. 389. *County clerk ex-officio recorder.*
Sec. 390. *Recorder to keep index; direct and inverted form of same.*
Sec. 391. *To note date and hour document received for record.*
Sec. 392. *Recorder to keep book of records of town plats.*
Sec. 393. *To keep index of grantors and grantees.*
Sec. 394. *Copies of records and files prima facie evidence.*
Sec. 395. *County authorized to administer oaths, take acknowledgments, etc.*
Sec. 396. *County clerk not to deliver warrants, except to payer, his agent, assignee, or legal representative.*
Sec. 397. *Attachment book to be kept by recorder.*

Sec. 384. A county clerk shall be elected in each county of this Territory, for the term of two years, and he shall, before he enter upon the duties of his office, execute and file with the treasurer of the county a bond, with two or more sufficient sureties, in the penal sum of not less than five thousand dollars, to be fixed and approved by the treasurer, with conditions, in substance, as follows, to wit:

Whereas, the above bounden ———— was elected to the office of county clerk of ———— county, on the ———— day of ————; now, therefore, if the said ——— ——— shall faithfully perform all the duties of his office, and shall pay over all moneys that may come into his hands as such clerk, as required by law, and shall deliver to his successor in office all the books, records, papers, and other things belonging to his said office, then the above obligation to be null and void; otherwise to remain in full force.

Sec. 385. The county clerk shall be, in and for his county, clerk of the board of commissioners, and *ex-officio* county auditor.

Sec. 386. Every such clerk shall appoint a deputy, in writing under his hand, and shall file such appointment in his office, and such deputy, in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk, during such absence, or until such vacancy shall be filled. Every such clerk may appoint other deputies, and his sureties shall be responsible under his official undertaking for the acts of such deputies.

Sec. 387. The county clerk shall keep his office at the county seat, shall attend the sessions of the board of county commissioners, either in person, or by deputy, keep the seals, records, and papers of the board of county commissioners, and keep a record of the proceedings of said board, in a book as required by law, under the direction of said board of commissioners.

SEC. 388. If a vacancy in the office of county clerk shall occur by death, resignation, or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy until a successor shall be elected according to law.

SEC. 389. The county clerk shall be *ex-officio* recorder of deeds, and shall have custody of, and shall safely keep and preserve all the books, records, deeds, maps, and papers deposited, or kept in his office, and shall also record all deeds, mortgages, maps, instruments and writing, authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law.

SEC. 390. Every recorder shall keep a general index, direct and inverted, in his office; the direct index shall be divided into seven columns, with heads to the respective columns, as follows, to wit:

Time of reception.	Names of grantors.	Names of grantees.	Nature of instrument.	Vol. & Page where recorded.	Description of tract.	Remarks.

He shall make correct entries in such general index of every instrument recorded, concerning or affecting real estate, under the appropriate headings, entering the names of the "grantors," in alphabetical form. The general inverted index shall be divided into seven columns, as follows, to wit:

Time of reception.	Names of grantees.	Names of grantors.	Nature of instrument.	Vol. & page where recorded.	Description of tract.	Remarks.

He shall make, in such general index, correct entries of every instrument required by law to be entered in the general index direct, entering the names of the grantees in alphabetical order; and whenever any bond, mortgage, or other instrument has been released or discharged from record, whether by written release upon the margin of the records, or by recording a deed of release, the recorder shall immediately note in both general indexes, under the column headed "Remarks" and and opposite to the appropriate entry, that such instrument has been satisfied.

SEC. 391. He shall also keep a recording book, each page of which shall be divided into five columns, as follows, to wit:

Time of reception.	Names of grantors.	Names of grantees.	To whom delivered.	Fees received.

Whenever any instrument has been received by him for record, he shall immediately endorse upon such instrument his certificate, noting the day, hour and minute of its reception, the volume and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of the filing of the same. Whenever any instrument has been filed as aforesaid, the recorder shall immediately make an entry of the same in his receiving book under the appropriate heading, with the amount paid as fees for recording the same; and after such instrument has been recorded, he shall deliver it to the person authorized to receive it, writing the name of the person to whom it was delivered in the appropriate column.

SEC. 392. He shall also keep a large well-bound book, in which shall be platted all maps of towns, villages, or additions to the same, within his county, together with the description, acknowledgment, or other writing thereon. He shall keep an index to such book of plats, which index shall contain the name or names of the proprietors of said town, or village, or addition. No recorder of deeds shall be bound to to perform any of the duties required to be performed by this act, for which a fee is allowed, unless such fee has been paid or tendered.

SEC. 393. He shall keep an index of each volume of records kept in his office, showing on one page the grantors' names in alphabetical order, and on the other page the names of the grantees, in alphabetical order.

SEC. 394. Copies of all papers filed in the office of the recorder of deeds, and transcript from the books of record kept therein, certified by him under the seal of his office, shall be *prima facie* evidence in all cases.

SEC. 395. That county clerks, and *ex-officio* county recorders, of each county of the Territory be, and are hereby, authorized to administer legal oaths, and take such acknowledgments to any instruments of writing required to be acknowledged by any law of this Territory.

SEC. 396. The county clerk shall in no case deliver any county order or warrant issued by the board of county commissioners to any person except the payee thereof, or to his agent, assignee, or legal representative, whose authority to receive and receipt for the same shall be in writing and delivered to the clerk; and it shall be the duty of the board of commissioners, at each session thereof, to examine the book in which county orders or warrants are entered, and ascertain to whom any county order or warrant issued by their authority shall have been delivered; and if the county clerk shall have delivered any order or warrant to any person except as herein provided, he shall be liable to the county therefor, and the amount of such order or warrant shall be deducted out of any fees, emoluments, or indebtedness due to such clerk from the county.

NOTE.—Act January 12th, 1872.

SEC. 397. There shall be kept in the recorder's office of the county recorder of each county, a book called "attachment book," in which shall be entered by such recorder, in alphabetical form, the names of any person or persons against whom any writ or notice of attachment has been filed in his office; there shall also be entered in said book the time such writ was filed. Such entries shall be made under appropriate heads for that purpose. For making such entry the recorder shall receive twenty-five cents, to be paid by the plaintiff in the action, and taxed and allowed to him as other costs and disbursements in the action.

NOTE.—Act of February 13th, 1874.

ARTICLE V.

SHERIFFS.

Sec. 398. *Sheriff elected for two years and to give bond.*
Sec. 399. *Form and condition of bond.*
Sec. 400. *Sheriff to appoint under-sheriff.*
Sec. 401. *Sheriff to appoint deputies.*
Sec. 402. *Appointment to be in writing and filed in office of county clerk.*
Sec. 403. *Sheriff to have charge of jail and prisoners.*
Sec. 404. *To execute all processes and attend court.*
Sec. 405. *Sheriff to preserve peace and suppress affrays.*
Sec. 406. *To deliver to successor jail and other property of the county.*
Sec. 407. *To execute processes received before removal or expiration of term.*
Sec. 408. *When misconduct of deputy breach of bond.*
Sec. 409. *Action for breach of bond may be prosecuted against executor or administrator.*
Sec. 410. *Paper to be served on sheriff may be left at his office.*
Sec. 411. *No sheriff to advise as attorney.*
Sec. 412. *Liable to fine for not serving process.*
Sec. 413. *Liable to fine for receiving illegal fee.*

SEC. 398. A sheriff shall be elected in each county organized for judicial purposes, for the term of two years, and who shall, before he enter upon the duties of his office, execute to this Territory a bond with at least three sufficient securities, in such penal sum not less than five thousand dollars, nor more than fifty thousand dollars, as the judge of the probate court and county clerk shall specify and approve; said bond, when thus approved, to be filed in the office of said clerk; and no person shall be received as surety who is not worth at least two thousand dollars, over and above his just debts: *Provided,* That no person shall be elected sheriff for more than two terms in succession.

Sec. 399. The condition of such bond shall be in substance as follows:

Whereas, The above bounden ——— ——— was elected to the office of sheriff of the county of ———, on the ——— day of ———. Now the condition of this obligation is such, that if the said ——— ——— shall well and faithfully perform and execute the duties of the office of sheriff of said county of ——— during his continuance in office, by virtue of said election, without fraud, deceit, or oppression, and shall pay over all moneys that may come into his hands as sheriff, and shall deliver to his successor all writs, papers and other things pertaining to his office, which may be so required by law, then the above obligation shall be void; otherwise to be and remain in full force and effect.

Sec. 400. The sheriff of each county shall, as soon as may be, after entering upon the duties of his office, appoint some proper person under-sheriff of said county, who shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such under-sheriff, or if he become incapable of executing the duties of said office, another shall in like manner be appointed in his place.

Sec. 401. Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts and those of his under-sheriff he shall be responsible; and may revoke such appointments at his pleasure; and persons may also be deputized by such sheriff or under-sheriff, in writing, to do particular acts; and the sheriff and his sureties shall be responsible on his official bond, for the default or misconduct of his under-sheriff and deputies.

Sec. 402. Every appointment of an under-sheriff, or of a deputy-sheriff, and every revocation of such appointment, shall be in writing, under the hand of the sheriff, and shall be filed in the office of the clerk of the county; but this section shall not extend to any person who may be deputized by any sheriff or under-sheriff, to do a particular act only.

Sec. 403. The sheriff shall have charge and custody of the jails in his county, and of the prisoners in the same, and shall keep them himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable.

Sec. 404. The sheriff, in person, or by his under-sheriff or deputy, shall serve and execute, according to law, all processes, writs, precepts, and orders issued or made by lawful authority, and to him directed; and shall attend upon the several courts of record held in his county.

Sec. 405. It shall be the duty of the sheriff and under-sheriff and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil and criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner and constable, may call to their aid such person or persons of their county as they may deem necessary.

Sec. 406. Whenever a new sheriff shall be elected and shall have qualified as required by law, the former sheriff shall, upon demand, deliver to him the jail and other property of the county, and all prisoners in such jail, and all writs, processes, orders and other papers belonging to such office, and in his possession, or the possession of his under-sheriff or deputies, except as provided in the next succeeding section; and, upon delivery thereof, such new sheriff shall execute to the former sheriff a receipt therefor.

SEC. 407. Sheriffs, under-sheriffs, and deputies may execute and return all such writs and processes as shall be in their hands at the expiration of their term of office, or at the time of their removal from office, which they shall have begun to execute by service, levy or collection of money thereon.

SEC. 408. Any default or misconduct in the office of deputy sheriff or jailer, after the death, resignation, or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

SEC. 409. Any action for default or misconduct of any sheriff, his under-sheriff, jailer, or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

SEC. 410. Every paper required by law to be served on the sheriff may be served on him in person, or left at his office during business hours.

SEC. 411. No sheriff, under-sheriff, or deputy shall appear or advise as attorney or counselor in any case in any court.

SEC. 412. Whenever any sheriff shall neglect to make due return of any writ or process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both at the discretion of the court, subject to appeal—such fine, however, not to exceed two hundred dollars—and also an action for damages to the party aggrieved.

SEC. 413. No sheriff shall, directly or indirectly, ask, demand, or receive, for any service to be by him performed in the discharge of any of his official duties, any greater fees than are allowed by law, on pain of forfeiture of treble damages to the party aggrieved, and of being fined in a sum not less than twenty-five dollars and not more than two hundred dollars.

NOTE.—Act of January 12th, 1872.

ARTICLE VI.

CORONER.

Sec. 414. *Coroner to be elected and give bonds.*
Sec. 415. *Coroner to exercise power of sheriff in certain cases.*
Sec. 416. *To execute process when sheriff a party.*
Sec. 417. *To serve process when sheriff prejudiced or related to party in suit.*
Sec. 418. *To hold inquest; when and how.*
Sec. 419. *To summon jurors and administer oaths.*
Sec. 420. *May issue subpœnas and punish for contempt.*
Sec. 421. *Oath to witnesses.*
Sec. 422. *To reduce testimony to writing.*
Sec. 423. *Form of verdict.*
Sec. 424. *To be kept secret; when.*

Sec. 425. *Coroner may order arrest.*
Sec. 426. *May issue warrants of arrest.*
Sec. 427. *Warrant of equal authority with justice's.*
Sec. 428. *What warrant to contain.*
Sec. 429. *What to return to district court.*
Sec. 430. *To have body buried and expense paid.*
Sec. 431. *When justice to act as coroner.*
Sec. 432. *When to summon surgeon to inquisition.*

SEC. 414. A coroner shall be elected in each county for the term of two years, who shall, before he enter upon the duties of his office, give bonds to this Territory in such penal sum, not less than five hundred dollars, nor more than five thousand dollars, with sufficient sureties, not less than two in number, as the county treasurer shall direct and approve, the condition of which bond shall be in substance the same as that given by the sheriff, such bond to be filed with the clerk of the proper county.

SEC. 415. When there shall be no sheriff in the county organized for judicial purposes, it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county until a sheriff be elected and qualified; and when the sheriff, from any cause, shall be committed to the jail of his county, the coroner shall be keeper thereof during the time the sheriff shall remain prisoner therein.

SEC. 416. Every coroner shall serve and execute processes of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to a case, or when affidavit shall be made and filed, as provided in the succeeding section; and in all such cases he shall exercise the powers and proceed in the same manner as prescribed for the sheriff in the performance of similar duties.

SEC. 417. Whenever any party, his agent, or attorney, shall make and file with the clerk of the proper court an affidavit, stating that he believes that the sheriff of such county will not, by reason of either partiality, prejudice, consanguinity, or interest, faithfully perform his duties in any suit commenced, or about to be commenced, in said court, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done.

SEC. 418. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of any person supposed to have died by unlawful means, the cause of whose death is unknown, found or being in the county, it shall be his duty to summon, forthwith, six citizens of the county to appear before him at a time and place named.

SEC. 419. If any juror fail to appear, the coroner shall summon the proper number from by-standers immediately, and proceed to impannel them, and administer the following oath in substance:

You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body lies here dead came to his death, according to your knowledge and the evidence given you. So help you God.

SEC. 420. The coroner may issue subpœnas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct; and witnesses shall be allowed the same fees as in cases before a justice of the peace; and the coroner shall have the same authority to enforce the attendance of witnesses, and to punish them and jurors for contempt in disobeying his processes, as a justice of the peace has when his process issues in behalf of the Territory.

WITNESS'S OATH.

SEC. 421. An oath shall be administered to the witnesses in attendance, as follows:

You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

TESTIMONY.

SEC. 422. The testimony shall be reduced to writing, under the coroner's order, and subscribed by the witnesses.

VERDICT.

SEC. 423. The jurors having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition, in writing, under their hands, in substance as follows, and stating matters in the following form suggested as far as found:

TERRITORY OF MONTANA, } *ss.*
County of ———. }

An inquisition holden at ———, in the county of ———, on the ——— day of ———, A. D. 18—, before me, —— ——, coroner of said county, upon the body of —— ——, (or person unknown), there lying dead, by the jurors whose names are hereunto subscribed, the said jurors, upon their oaths, do say (here state when, how, by what person, means, weapons, or accident, he or she came to his or her death, and whether feloniously). In testimony whereof the said jurors have hereunto set their hands the day and year aforesaid.

SAME, SECRET.

SEC. 424. If the inquisition find a crime has been committed on the deceased, and name the person whom the jury believes has committed it, the inquest shall not be made public until after the arrest, directed in the next section.

SEC. 425. If the person charged be present, the coroner may order his arrest, by an officer or any person, and shall make a warrant requiring the officer or other person to take him before a justice of the peace.

WARRANT.

SEC. 426. If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff, or any constable of the county, requiring him to arrest the person and take him before a justice of the peace.

SEC. 427. The warrant of the coroner in the above cases shall be of equal authority with that of a justice of the peace; and when the person charged is brought before the justice of the peace, he shall be dealt with as a person held under a complaint in the usual form.

SEC. 428. The warrant of the coroner shall recite substantially the proceedings had before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice, instead of a complaint.

RETURN.

SEC. 429. The coroner shall then return to the district court the inquisition, the written evidence, and the list of the witnesses who testified material matter.

BURIAL EXPENSES.

SEC. 430. The coroner shall cause the body of a deceased person which he has called to view to be delivered to his or her friends, if there be any; if not, he shall cause him or her to be decently buried, and the expenses to be paid from any property found with the body; or if there be none, from the county treasury, by certifying an account of the expenses, which, being presented to the board of county commissioners, shall be allowed by them, if deemed reasonable, and paid as other claims on the county.

JUSTICES TO ACT AS CORONER.

SEC. 431. When there is no coroner, or in case of his absence, or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies.

SURGEON.

SEC. 432. In the above inquisition by a coroner, when he or a jury shall deem it requisite, he may summon one or more physicians or surgeons to make scientific examinations, and may allow, in such cases, a reasonable compensation, subject to the confirmation of the board of county commissioners.

NOTE.—Act January 12th, 1872.

ARTICLE VII.

COUNTY TREASURER.

Sec. 433. *To be elected and give bond.*
Sec. 434. *Condition and form of bond.*
Sec. 435. *Treasurer may appoint deputy.*
Sec. 436. *Vacancy occurring county commissioner may appoint.*
Sec. 437. *Certain persons shall not be treasurer.*
Sec. 438. *To receive and pay out moneys.*
Sec. 439. *To keep books open to inspection and to settle with county commissioners.*
Sec. 440. *How county orders entitled to payment.*
Sec. 441. *To deliver all books and papers to successor; penalty for not doing.*
Sec. 442. *Treasurer to be collector of taxes.*
Sec. 443. *To assess property not assessed by assessor.*
Sec. 444. *County warrants; how registered.*

Sec. 433. A county treasurer shall be elected in each county for the term of two years, and shall, before entering upon the discharge of his duties, execute to the board of county commissioners of his county a bond with three or more sufficient sureties, to be approved by the board, and in such penal sum as they may direct; which bond, with the approval of the board endorsed thereon by their clerk, shall be filed in the office of the county clerk; and in case the board of commissioners shall not be in session in time for any county treasurer to present his bond for their approval as above specified, or he shall be unable from any cause to present his bond at any regular meeting of the board, after due notice of his election, then it may be lawful for such treasurer to present his bond to the chairman and clerk of such board for their approval; and their approval endorsed thereon shall have the same effect as if done by the board of commissioners. And in such case, when the board shall not have fixed the penal sum of such bond, it shall not be less than double the amount of all moneys directed by the board to be levied in the county and to be paid to the treasurer during the year.

Sec. 434. The condition of such bond shall be in substance as follows:

Whereas, the herein bounden —— ——— was elected to the office of county treasurer of the county of ———, on the —— day of ———, A. D. 18—. Now, therefore, the condition of this obligation is such, that if the said —— ———, and his deputy, and all persons employed in his office, shall faithfully and promptly perform the duties of said office, and the said —— — ——— and his deputies shall pay according to law all moneys which shall come to his hands as treasurer, and will render a just and true account thereof whenever required by said board of county commissioners, or by any provision of law, and shall deliver over to his successor in office, or to any person authorized by law to receive the same, all moneys, books, papers, and other things appertaining thereto, or belonging to his office, the above obligation to be void, otherwise to be in full force.

Sec. 435. The county treasurer may appoint a deputy, who, in the absence of the treasurer from his office, or in case of vacancy in said office, for any disability of the treasurer, shall perform all the duties of the office of treasurer until such vacancy be filled, or such disability be removed.

Sec. 436. In case the office of county treasurer shall become vacant, the board of county commissioners may, if in their opinions the interests of the county require it, appoint a suitable person to perform the duties of such treasurer; and the person so appointed, upon giving bond, with like sureties and condition as that required in county treasurer's bonds, and in such sum as said board shall direct, shall be invested with all the duties of such treasurer until such vacancy shall be filled, or in case of any disability, till such disability be removed.

Sec. 437. No person holding the office of sheriff, judge of probate, county attorney, county clerk, deputy county treasurer, nor any member of the board of commissioners, shall hold the office of county treasurer.

Sec. 438. It shall be the duty of each county treasurer to receive all moneys belonging to his county, from whatsoever source they may be derived, and other moneys which are by law directed to be paid to him. All moneys received by him for the use of the county shall be paid out by him only on the orders of the board of commissioners, according to law, except when specified provision for the payment thereof is or shall be otherwise made by law.

Sec. 439. Each county treasurer shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose, which books shall be open at all times for the inspection of the board of county commissioners, or any member thereof, and to all county and Territorial officers; and at the annual meeting of the board of commissioners, or at such other time as they may direct, he shall settle with them his account as treasurer, and for that purpose he shall exhibit to them all his books and accounts, and all vouchers relative to the same, to be audited and allowed.

Sec. 440. County orders, properly attested, shall be entitled to preference, as to payment, according to the order of time in which they may be presented to the county treasurer, but when two or more orders are presented at the same time, preference shall be given to the order of the oldest date.

Note.—Act February 9th, 1874.

Sec. 441. Upon the resignation or removal from office of any county treasurer, all books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon oath of such preceding county treasurer; or, in case of his death, upon oath of his executors or administrators. If any such preceding county treasurer, or in case of his death, if his executors or administrators shall neglect or refuse to deliver up such books, papers, and moneys, on oath, when lawfully demanded, every such person shall forfeit a sum not less than one hundred dollars, nor more than five hundred dollars, and be also liable upon his official bond for such refusal or neglect.

SEC. 442. The county treasurer of each county shall be, by virtue of his office, collector of taxes therein, and shall perform such duties in that regard as are prescribed by law.

SEC. 443. It shall be the duty of said county treasurer to assess at a fair value the property of any person liable to pay taxes whom the county assessor has failed to assess, and to place the same on the tax duplicate, and to collect taxes on the same in the manner provided by law: *Provided, however,* That said treasurer shall not be compelled to assess such property in person. *Provided, further,* That he be authorized to administer oaths to such persons, or any others, touching the value of said property.

SEC. 444. The county treasurer shall not register any county order or warrant in the name of any person other than the payee thereof, except at the request of such payee, or his agent, assignee, or legal representative, whose authority shall be produced to such treasurer in writing, and the county treasurer shall not pay any order or warrant except to the payee thereof, or to his agent, assignee, or legal representative, whose authority shall be in writing, and delivered to such treasurer, and shall be returned with such order or warrant, when paid, to the board of commissioners.

NOTE.—Act of January 12th, 1872, except where otherwise noted.

ARTICLE VIII.

COUNTY SURVEYOR.

Sec. 445. *County surveyor to be elected; term of office; bond.*
Sec. 446. *May appoint assistants; certificate of, legal evidence.*
Sec. 447. *Duty to execute survey ordered by court.*
Sec. 448. *To keep record of survey.*
Sec. 449. *County commissioner to appoint to fill vacancy.*

SEC. 445. A county surveyor shall be elected for the term of two years, who shall give bond to the board of county commissioners, to be approved by the county clerk of the proper county, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties.

SEC. 446. The county surveyor may appoint as many assistants as he may think proper, for whose official acts he shall be responsible. The certificate of the county surveyor, or any of his deputies, shall be admitted as legal evidence in any court of the Territory, but the same may be explained or rebutted by other evidence.

SEC. 447. It shall be the duty of the county surveyor, by himself or one of his deputies, to execute any survey which may be required by an order of any court upon the application of any individual or corporation.

SEC. 448. The said surveyor shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided for that purpose by the county, which shall be transmitted to his successor in office. He shall also number each survey, progressively, and shall preserve a copy of field notes and calculations of each survey, endorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with a certificate of survey, shall be furnished by said surveyor to any person requiring the same.

SEC. 449. If the office of county surveyor be at any time vacant, the board of county commissioners are hereby empowered to appoint some suitable person to perform the duties of the office until a county surveyor be elected.

ARTICLE IX.

ASSESSOR.

Sec. 450. *To be elected in each county; term of office.*
Sec. 451. *Bond, official oath, vacancies.*
Sec. 452. *Not to be re-elected to succeeding term.*
Sec. 453. *Deputy assessors.*
Sec. 454. *Fees of assessor.*
Sec. 455. *Duties as to special poor tax.*

SEC. 450. There shall be elected in each of the counties of this Territory, at the next general election, and biennially thereafter, one assessor, who shall hold his office for the term of two years, and until his successor is elected and qualified: *Provided*, That all assessors elected at the first general election after the passage of this article shall not take office until after the expiration of the term of the present incumbent in their respective counties.

SEC. 451. Each county assessor shall, before entering upon the duties of his office, give a bond in a sum not less than two thousand dollars, or more, if the county commissioners so elect, with two or more sufficient sureties, conditioned for the faithful performance of his duties according to law, and to the satisfaction of the county commissioners, and shall take and subscribe an oath of office, which shall be endorsed on such bond; the bond must be approved by the commissioners, and shall be deposited with the county clerk. Said assessor shall give the bond and take the oath of office herein required on or before the first Monday in December after his election, and if the county clerk receives no notice of the qualification of such assessor on or before the said first Monday in December after the election, the office shall be declared vacant; or if there be a failure to elect by the people, or if there shall be, at any time, or from any cause, a vacancy in the office of assessor, or if said assessor, having qualified, shall fail to proceed to the discharge of the duties of his office before the first day of February in each year, the county commissioners shall forthwith appoint one suitable person, a resident of the county, to discharge the duties of county assessor, who shall thereupon take the necessary oath of office, give the same bond, perform the same duties, be entitled to the same fees, and subject to the same liabilities as in case of assessors elected by the people.

SEC. 452. No person who shall have served one term of two years as assessor in any county shall be eligible to the next succeeding term: *Provided*, That the provisions of this article shall not apply to the election of assessor, or his eligibility to such office, in those counties wherein it is provided by law that the sheriff shall be, by virtue of his office, *ex-officio* assessor.

NOTE.—Act February 16th, 1877.

SEC. 453. That the several assessors and *ex-officio* assessors of the several counties may, by and with the consent and approval of the board of county commissioners, appoint one deputy, who shall be sworn and give a bond the same as the principal himself, and such deputy may do and perform, under the direction of said county commissioners, any and all official acts and duties that the assessor is now required by law to do and perform.

NOTE.—Act of February 20th, 1879.

SEC. 454. That the assessors of each county shall be entitled to receive from their respective counties, as fees, a percentage of the assessed valuation returned by them (subject to all reductions made by the board of equalization) of not less than one-half of one mill on the dollar, nor more than one mill on the dollar, as the board of county commissioners may deem just: *Provided,* That nothing in this article shall be construed to apply to those counties where the sheriffs are *ex-officio* assessors thereof.

SEC. 455. It shall be the duty of assessors to enter upon all assessment lists returned by them the special poor tax now required by law, and they shall be entitled to receive thereon the same compensation allowed them for the assessment of property in their county; but, for the collection of the special poor tax, of persons who pay no property tax, they shall be entitled to receive twenty per cent. thereof.

NOTE.—Act of February 21st, 1879.

ARTICLE X.

MISCELLANEOUS PROVISIONS.

Sec. 456. *County offices; where kept; when kept open; books, papers, etc., to be kept open for examination.*
Sec. 457. *County officers to take oath and file bond; when.*
Sec. 458. *Deputy to make and file same oath and bond as principal.*
Sec. 459. *Copies of records and files to be evidence.*
Sec. 460. *Officers acting in capacity of others to have same powers and fees.*
Sec. 461. *Penalty for refusing to perform duties.*

SEC. 456. Each sheriff, county clerk, county treasurer, county attorney, and probate judge, shall keep his office at the county seat of his county, and in the office provided by the county, if any such has been provided, and if there be none established then at such place as shall be fixed by special provision of law, or if there be no such provision, then at such place as the board of county commissioners shall direct, and they shall each keep the same open during the usual business hours of each day (Sundays excepted), and all books and papers required to be in their office shall be open for the examination of any person, and if any person or officer shall neglect to comply with the provisions of this section, he shall forfeit for each day he so neglect the sum of five dollars.

SEC. 457. Each county or township officer named in this and the succeeding article shall, before entering upon the duties of his office, and within twenty days after receiving official notice of his election or appointment, or within twenty days after the commencement of the term for which he was elected, execute and deposit his official bond, as prescribed by law, and any such officer shall also, within the same time, take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same, with his official bond, to be filed and preserved therewith.

SEC. 458. Every deputy, appointed to any of said offices, shall, before entering upon his duties under such appointment, take and subscribe to the like oath of office as that required to be taken by the officer appointing him, and shall deposit the same in the office where the bond of such officer is deposited.

SEC. 459. Copies of all documents, writs, proceedings, instruments, papers, and writings, duly filed or deposited in the office of any judge of probate, county clerk, or county treasurer, and transcript from books of record or proceedings kept by any of said officers, with the seal of his office affixed, shall be *prima facie* evidence in all cases.

SEC. 460. Whenever any justice of the peace shall be required to act as coroner in any case, or any coroner shall be required to act as sheriff, or any other officer in this Territory shall be required to perform any duties belonging to any other officer, he shall, for the time being, have the same powers, in respect to those duties, as are given by law to the officer whose duties he shall perform, and shall be entitled to receive the same compensation for his services.

NOTE.—Act of January 12th, 1872.

SEC. 461. That any district, county, or township officer, whether elected or appointed to such office, who shall fail, or refuse, to perform any duty by law required of him as such officer, shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than fifty nor more than one hundred dollars, and shall be imprisoned in the county jail for a term not more than ninety days, and, upon such conviction, shall not receive any fee whatever for the performance of the duties of his office; and the boards of the commissioners of the several counties are prohibited from auditing or paying such officer any fee, salary, or compensation whatever.

NOTE.—Act of February 21st, 1879.

ARTICLE XI.

JUSTICES AND CONSTABLES.

Sec. 462. *Number of justices and constables to be elected in each township.*
Sec. 463. *Justices to give bond and take oath.*
Sec. 464. *Constables to give bond and take oath.*

SEC. 462. That on the first Monday of August next there shall be elected by the qualified voters of each township, which may be organized by the board of county commissioners, two justices of the peace, one of whom shall be elected for two years, and one for one year, and it shall be so designated on the ballot; also two constables for the same time, and in the same manner, and annually thereafter there shall be elected one justice of the peace and one constable who shall hold their term of office for two years.

NOTE.—Act of May 6th, 1873.

SEC. 463. Every justice of the peace, after he has received his certificate of election, shall, before entering upon the duties of his office, be required to execute an undertaking to the Territory of Montana, in the penal sum of two thousand dollars, with, at least, two sufficient sureties, who shall certify the same according to law, which said undertaking shall be approved by the county clerk, and, in addition, such justice shall take and subscribe to an oath, or make affirmation to support the Constitution of the United States, and the organic act of this Territory, and that he will well and truly perform all the duties which may be required of him by law, and which oath or affirmation shall be endorsed upon his official undertaking, which shall be filed with the county clerk.

SEC. 464. Every constable elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, be required to execute an undertaking to the Territory of Montana, in the penal sum of two thousand dollars, with two sufficient sureties, and comply with the previous section, as justices of the peace are required by law to do.

NOTE.—Act of January 12th, 1872.

ARTICLE XII.

ACCOUNTS AND SETTLEMENTS OF COUNTY OFFICERS.

Sec. 465. *Collectors, sheriffs, marshals, constables and others to settle with commissioners.*
Sec. 466. *Upon refusal, the commissioners must adjust their accounts.*
Sec. 467. *Commissioners may refuse to allow delinquent's commission.*
Sec. 468. *If balance due not paid in ten days, ten per cent. added.*
Sec. 469. *Procedure against delinquent's bonds.*
Sec. 470. *Discretion of commissioners.*
Sec. 471. *County clerk custodian of records, etc.*
Sec. 472. *Duties of clerk of the board of county commissioners.*
Sec. 473. *Clerks of courts to keep just accounts of fines, etc.*
Sec. 474. *To certify fines, etc., to county commissioners.*
Sec. 475. *Justice of the peace to account.*

SEC. 465. Collectors, sheriffs, marshals, constables, and persons chargeable with moneys belonging to any county, shall render their accounts to, and settle with, the board of county commissioners, at each stated term thereof, pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the board of county commissioners within five days thereafter.

Sec. 466. If any person thus chargeable shall neglect or refuse to render true accounts, or settle as aforesaid, the board of county commissioners shall adjust the accounts of such delinquent according to the best information they can obtain, and ascertain the balance due to the county.

Sec. 467. In such case the board of county commissioners may refuse to allow any commission to such delinquent, and he shall moreover, without delay, pay into the county treasury the balance found to be due as aforesaid.

Sec. 468. If he shall not pay the amount thereof, and produce to the clerk of the board of county commissioners the treasurer's receipt therefor, within ten days after such balance is ascertained, the clerk shall charge such delinquent ten per cent. on the amount then due.

Sec. 469. Unless the delinquent appear on or before the first day of the next session of the board of county commissioners, and show good cause for setting aside such settlement, it shall be the duty of the board of county commissioners to give to the district attorney of the district in which such county is situated, a statement of such delinquent account; and it shall thereupon be the duty of such district attorney to proceed to collect such amount from such delinquent and his bondsmen.

Sec. 470. If good cause be shown for setting aside such settlement, the board of county commissioners may re-examine the accounts, settle and adjust the same according to law, and, in their discretion, the penalties imposed.

Sec. 471. The clerk of the board of county commissioners of the several counties in this Territory shall be the sole custodian of all books, papers, and records connected with his office, and shall be alone responsible for the same.

Sec. 472. It shall be the duty of the clerk of the board of county commissioners:

First. To keep regular accounts between the treasurer and the county, charging him therein with all moneys paid into the treasury, and crediting him with the money he may have disbursed between the periods of his respective settlements with the board of county commissioners.

Second. To adjust accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or who may become entitled to receive moneys therefrom.

Third. To file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be entitled to be read in evidence in all courts of law and elsewhere.

Fourth. To issue warrants on the treasury for all moneys ordered to be paid by the board of county commissioners at every regular term, balance and exhibit the accounts kept by him as often as required by the board of county commissioners, and keep his books and papers at all times ready for the inspection of the board of county commissioners, or any member thereof.

SEC. 473. It shall be the duty of all clerks of courts of record to keep just accounts of all fines, penalties, forfeitures and judgments rendered, imposed, or accruing in favor of any county, ready at all times for the inspection of the judge of their respective courts.

SEC. 474. The clerks of such courts shall, within ten days after the end of each term of the respective courts of which they are the clerks, certify to the board of county commissioners of said counties the amount of fines imposed and forfeitures incurred at said term, and against whom asssessed, and by whom incurred, and forthwith deposit said certificate with the clerks of the board of county commissioners of their respective counties, and if any clerk shall fail to comply with this section he shall forfeit and pay to the county not less than ten nor more than one hundred dollars, to be recovered by civil action.

SEC. 475. It shall be the duty of each justice of the peace at each meeting of the board of county commissioners, when not otherwise provided by law, to make out a list of all fines by him imposed to the use of the county, stating therein the name of the officer who has or ought to have collected the same, which he shall certify and deliver to the clerk of the board of county commissioners, who shall charge the same accordingly.

NOTE.—Act of January 8th, 1872.

ARTICLE XIII.

OFFICES CONSOLIDATED IN MEAGHER, CHOTEAU, JEFFERSON, GALLATIN, AND MISSOULA COUNTIES.

Sec. 476. *Sheriffs to be ex-officio assessors, except as to Gallatin.*
Sec. 477. *Probate judge to be ex-officio clerk and recorder.*
Sec. 478. *Treasurer to be ex-officio superintendent of common schools.*
Sec. 479. *Refusal of officer to act, office to be vacated.*
Sec. 480. *Election.*
Sec. 481. *Not to affect present incumbents.*

SEC. 476. The sheriffs of the counties of Meagher, Choteau, Jefferson, Gallatin, and Missoula, shall be *ex-officio* the assessors of said counties, and shall perform the duties now required by law to be performed by assessors, and shall, before proceeding to assess any property, take and subscribe the oath of office now required to be taken by assessors; and, in addition to his fees as sheriff, shall be entitled to receive not less than one-half, nor more than three-fourths of one mill on the assessed value of all property returned by him, subject to all deductions made by the board of equalization: *Provided,* That the provisions of this article shall apply to Gallatin county, save and except as to the offices of probate judge and county clerk, which offices shall not in any case be consolidated in the said county of Gallatin.

SEC. 477. That the probate judge of said several counties shall, by virtue of their said offices, be *ex-officio* county clerk and recorder, and, in addition to the duties of said office of probate judge, shall perform the duties of county clerk and recorder, as prescribed by law, and shall, in addition to their fees as probate judge, receive the same fees as are by law allowed to said clerks and recorders for their services as such clerks and recorders; and before entering upon the discharge of their duties, they shall, in addition to their bonds as probate judge, execute the same bond as is now required by law of said clerk and recorder, and take the same oath of office as is now required of such clerk and recorder: *Provided*, That no compensation shall be allowed the probate judge, except the said fees now prescribed by law for the performance of the duties of probate judge and clerk and recorder.

Sec. 478. The county treasurers of said counties shall be *ex-officio* superintendents of common schools of said counties, and shall perform the duties of such superintendents without other compensation than that allowed by law to county treasurers.

Sec. 479. The refusal of any officer to act as assessor, or as county clerk and recorder, or as superintendent of common schools, shall vacate the office of sheriff, or probate judge, or treasurer, so refusing to act, which shall be filled as in other cases of vacancy.

Sec. 480. At the next general election to be held in said several counties, there shall be elected a sheriff, who shall be *ex-officio* assessor; a probate judge, who shall be *ex-officio* county clerk and recorder; and a treasurer, who shall be *ex-officio* superintendent of common schools of said counties, respectively, who shall enter upon the duties of their respective offices as provided for in this article, at the time or times now prescribed by law.

Sec. 481. This article shall not affect the tenure of office of any officer now holding the office of county assessor, county clerk and recorder, or superintendent of schools, nor with their discharge of the duties thereof, but they may proceed to discharge said duties and hold their said offices to the close of the terms for which they have been elected or appointed, but otherwise this article shall take effect from and after its passage.

Note.—Act February 16th, 1877.

ARTICLE XIV.

OFFICES CONSOLIDATED IN BEAVERHEAD AND CUSTER COUNTIES.

Sec. 482. *Sheriffs to be ex-officio assessors; salaries.*
Sec. 483. *Probate judge to be ex-officio county clerk and recorder.*
Sec. 484. *County treasurer to be ex-officio superintendent of common schools.*
Sec. 485. *Upon refusal of officer to act, office to be vacated.*
Sec. 486. *Election.*
Sec. 487. *Not to affect present incumbents.*

Sec. 482. The sheriffs of the counties of Beaverhead and Custer shall be *ex-officio* the assessors of said counties, and shall perform the duties now required by law to be performed by assessors, and shall, before proceeding to assess any property, take and subscribe the oath of office now required to be taken by assessors; and in addition to his fees as sheriff shall be entitled to receive not less than one-half (½) and no more than three-fourths (¾) of one mill on the assessed value of all property returned by him, subject to all deductions made by the board of equalization.

SEC. 483. That the probate judges of the said counties shall, by virtue of their said offices, be *ex-officio* county clerk and recorder, and in addition to the duties of said office of probate judge, shall perform the duties of county clerk and recorder as prescribed by law; and shall, in addition to their fees as probate judge, receive the same fees as are by law allowed to said clerks and recorders for their services as such clerks and recorders; and before entering upon the discharge of their duties, they shall, in addition to their bonds as probate judge, execute the same bond as is now required by law of said clerk and recorder, and take the same oath of office as is now required by such clerk and recorder: *Provided,* That no compensation shall be allowed the probate judge except the said fees now prescribed by law for the performance of the duties of probate judge and clerk and recorder.

SEC. 484. The county treasurers of said counties shall be *ex-officio* superintendents of common schools of said counties, and shall perform the duties of such superintendents without other compensation than that allowed by law to county treasurers.

SEC. 485. The refusal of any officer to act as assessor, or as county clerk and recorder, or as superintendent of common schools, shall vacate the office of sheriff, or probate judge, or treasurer, so refusing to act, which shall be filled as in other cases of vacancy.

SEC. 486. At the next general election to be holden in said counties, there shall be elected a sheriff who shall be *ex-officio* assessor, a probate judge who shall be *ex-officio* county clerk and recorder, and a treasurer who shall be *ex-officio* superintendent of common schools in said counties, respectively, who shall enter upon the duties of their respective offices as provided for in this article at the time, or times, now prescribed by law.

SEC. 487. This article shall not affect the tenure of office of any officer now holding the office of county assessor, county clerk and recorder, or superintendent of schools, or with the discharge of their several duties; but they may proceed in the discharge of their duties and hold their said offices to the close of the terms for which they have been elected or appointed. Otherwise this article shall take effect from and after its passage.

NOTE.—Act February 5th, 1879.

ARTICLE XV.

CHANGING COUNTY SEATS.

Sec. 488. *Petition to change county seat.*
Sec. 489. *Publishing and posting notice.*
Sec. 490. *Style of ballots and manner of election.*

SEC. 488. It shall be the duty of the county commissioners of any county of this Territory, whenever a petition is presented to them, signed by a majority of the legal voters and tax payers of such county, praying that the county seat of the county be changed to any place named in such petition, to give notice to the people of their county, sixty days before the next general election to be held in such county, that the change named in such petition will be submitted to the voters of such county at such election, and whenever a majority of the legal voters of the Territory, taking as a basis the votes cast at the last general election, shall petition the legislative assembly to change the seat of government of the Territory, the legislative assembly shall submit the question of such change to a vote of the qualified electors of the Territory, at the next general election thereafter.

SEC. 489. The notice required in section 488 of this article, shall be published in some newspaper in such county thirty days previous to such election (if any such paper be published therein), but if no such paper be published in the county, then by posting written notices in ten public places in such county; one on the door of each postoffice in such county, and one at the place where the polls are opened, in each precinct in such county.

SEC. 490. At such election, the ballots shall have written or printed thereon, "county seat;" and those voting for a change of such county seat shall have written or printed under such words the name of the place named in such petition, and those opposed to such change shall have written or printed thereunder the name of the place where such county seat may then be, and the place receiving the highest number of votes shall be the county seat of such county.

NOTE.—Act January 12th, 1872.

CHAPTER XVII.

DECEASED PERSONS.

ARTICLE I.

ACTION FOR INJURIES TO DECEASED PERSON.

Sec. 491. *Party or corporation liable for injuries causing death.*
Sec. 492. *Personal representative of deceased to sue; measure of damages.*

SEC. 491. Whenever the death of a person shall be caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation or company which would have been liable if death had not ensued, shall be liable for an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

SEC. 492. Every such action shall be brought by, and in the name of, the personal representatives of such deceased persons, and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such damages, not exceeding twenty thousand dollars, as they shall deem a fair and just compensation, with reference to the pecuniary injuries resulting from such death, to the wife and next of kin of such deceased person: *Provided*, That every such action shall be commenced within three years after the death of such person.

NOTE.—Act January 8th, 1872. See Sec. 14 Civil Code.

CHAPTER XVIII.

DAMS AND RESERVOIRS.

Sec. 493. *Dam or reservoir to be substantially constructed.*
Sec. 494. *Hereafter not to be constructed except in a thorough and substantial manner.*
Sec. 495. *Jury appointed to examine dam or reservoir.*
Sec. 496. *Examination and verdict of such jurors if dam is secure.*
Sec. 497. *Further duties of such jurors.*
Sec. 498. *Proceedings if dam is insecure.*
Sec. 499. *Formation of jury to try issues.*
Sec. 500. *Appeals and provisional writs pending appeal.*
Sec. 501. *Fees and expenses of jurors.*
Sec. 502. *Experts to supervise construction of dams and reservoirs.*
Sec. 503. *Punishment.*

SEC. 493. No person shall hereafter fill or procure to be filled with water any dam or reservoir which is not so thoroughly and substantially constructed as that it will safely and securely hold the waters so to be turned therein, if upon the stream upon which said dam or reservoir is situate, and below the same, there are persons living whose lives are or may be endangered by the breaking of such dam or reservoir, or if upon said stream there is valuable property which may be damaged or destroyed by the breaking of such dam or reservoir and the escape of the waters therefrom.

SEC. 494. No person shall hereafter construct or cause to be constructed on such stream any dam or reservoir to accumulate the waters thereof, except in a thorough, secure and substantial manner.

SEC. 495. Upon complaint made on oath before any probate judge of any county in this Territory, that any person or persons are filling, or are proposing or threatening to fill, such dam or reservoir as is mentioned in section 493 of this chapter, or have filled or gathered water in such reservoir or dam, and that life or property is or will be thereby endangered, it shall be the duty of such probate judge, forthwith to appoint three discreet and proper persons of the county in which such dam or reservoir may be situate, competent to serve as jurors in such county, one of whom, if practicable, shall be a mining or civil engineer, and to administer to each of them an oath that he will diligently proceed to and thoroughly examine the said dam or reservoir, and determine as to its security, to the best of his ability, without fear or favor, and whether life or property is or will be endangered thereby by the breaking thereof and the escape of waters therefrom.

SEC. 496. Upon taking and subscribing said oath, it shall be the duty of such persons to proceed together to such stream, dam, or reservoir, and to make a thorough examination thereof, and if upon such examination the said persons shall find that along said stream there are persons residing whose lives may be endangered, or that there is property thereon below said dam or reservoir which may be endangered, damaged, or destroyed, they shall determine whether the said dam or reservoir is or is not secure against the pressure of the water confined therein, or the water proposed to be confined therein, and also secure against rains and freshets which may occur, and if they find that the same is secure against the occurrence of the casualties mentioned, or any of them, they shall make a verdict in writing to that effect, over their hands, to the probate judge who appoints them, which he shall enter of record as a proceeding in his court.

SEC. 497. If, upon such examination as to the safety of such reservoir, they, or a majority of them, shall deem such reservoir insufficient and insecure, they shall further inquire whether the danger to be apprehended is imminent or no, and if they, or a majority of them, shall be of the opinion that such danger is imminent, and that destruction of life or property will result from delay, it shall be their duty forthwith, in such matter as to them shall seem best, to draw from such reservoirs the waters therein, or so much thereof as will insure the safety of all persons and property below the same on the line of said stream, and they shall make return of their action to such probate judge; and in the discharge of such duties the persons so acting shall be deemed peace officers of the Territory, engaged, upon their discretion, in the lawful protection of life and property, and in preventing apprehended violence thereto.

SEC. 498. If, upon such examination, they, or a majority of them, shall deem such dam or reservoir insecure and insufficient, but that the danger therefrom is not immediate or imminent, they shall so state in writing to such probate judge, who shall thereupon cause a copy of said finding of said persons to be served on the owner or owners, or person or persons in charge thereof, with a notice requiring him or them to proceed forthwith to make the same secure, or to draw the water therefrom without delay; and unless such person or persons shall comply with such notice in the shortest practicable time, or unless the said person or persons, upon a hearing before said probate judge, upon notice to the complainant thereof, shall show that the said dam or reservoir is secure, or that no property or life would be endangered by its giving way, it shall be the duty of said probate judge to issue his writ commanding the sheriff to draw from said dam or reservoir the waters thereof.

SEC. 499. Upon such trial it shall be the duty of the probate judge to prepare a list from among the persons of the county competent to serve as jurors, of the names of twelve persons, who, in his judgment, are best qualified to judge of the sufficiency of any dam or reservoir, who may be interrogated as to causes of challenge for cause by any person interested, and if any shall not be indifferent as between the parties, or other cause of challenge for cause shall exist, and said person shall be challenged, the probate judge shall excuse him and summon others until twelve discreet persons remain against whom no challenge for cause exists, and the complainant and others, if any prosecuting with him, as prosecutors, and the owner, or persons complained of, or in charge of, or owning said dam or reservoir, as defendants, shall alternately strike from said list until it is reduced to six, who shall compose the jury to try the issue or issues named in section 497 of this chapter, or the parties aforesaid, if they can agree, may select the jury therefor.

SEC. 500. The person or persons, corporation or company, owning or using said reservoir, or dam and the waters therein, may appeal from any decision of the probate judge and the verdict of the persons appointed by such probate judge, to the district court, as appeals are taken in other cases, upon giving to any person or persons owning property on said stream below said dam or reservoir, which may be destroyed by the bursting thereof, and who shall have appeared and claimed such security in such sum or sums as the probate judge may determine, security against loss or damage resulting from the bursting of said dam or reservoir, which said appeal shall be tried by a jury who may hear testimony as to the questions involved, and shall also personally inspect the dam, reservoir or stream, and such appeal shall stay all proceedings as to said dam or reservoir, and the waters therein, except when it shall appear that the danger therefrom is imminent as aforesaid, in which case it shall be the duty of the said probate judge, while the court over which he presides has jurisdiction in the case, and of the judge of the district court after the case is appealed to that court, by proper writs of prohibition, mandamus, or assistance, to be issued provisionally, to protect life and property against any threatened assault upon either, by the careless or insecure accumulation of waters by any person or persons whomsoever, in the manner aforesaid; and if any person or persons shall resist any officer in the execution of any writ so issued by the said probate judge, or justice of the district court, or shall fail to assist such officer in the execution of such writ, when thereto requested by him, the person or persons being thereof convicted shall be punished as for resisting an officer, as now provided by law.

SEC. 501. The persons named in sections 495 and 499 of this chapter, serving as jurors, shall be entitled to all their necessary expenses of transportation, and mileage, and per diem of jurors, as provided by law; and if it shall be finally determined that no cause existed for the complaint, the complainant shall pay the costs thereof; and in the first instance, such complainant shall advance the necessary expenses of such jurors, and their fees, but if the said complaint is true, the person or persons, corporation or company owning, using, or proposing to use said dam or reservoir, shall pay the same, and judgment shall be rendered accordingly, in which case the same shall be a lien upon the said reservoir, and the ditches leading thereto and therefrom, and the waters thereof.

SEC. 502. That when hereafter any person, company, or corporation, engaged in constructing any dam or reservoir for the accumulation of water, shall be complained of by any person or persons whose life or property may be endangered by the breaking thereof, that the same is insecure, insufficient and dangerous, it shall be the duty of the probate judge to appoint three experts, under whose supervision the same shall be thereafter constructed, nor shall the same be filled with water until the owner or owners thereof shall have filed in the office of the clerk of the probate court a certificate, signed by said experts that the same is so built that no danger need be apprehended therefrom; and whenever any such complaint shall be made of any reservoir heretofore built of like purport, it shall be the duty of the probate judge to proceed as in this section is provided, and jurisdiction is hereby conferred upon said court to protect, by proper orders made in proceedings therefor, all persons, towns, and communities, against dangers resulting from insecure reservoirs.

SEC. 503. Any person, persons or company guilty of filling, erecting, constructing, or maintaining a dam or reservoir which is so filled, erected, constructed, or maintained as to endanger life or property in the manner heretofore in this chapter provided, shall be deemed guilty of erecting, constructing, filling, or maintaining a nuisance, and being thereof convicted, shall be punished as provided by law.

NOTE.—Act February 16th, 1877.

CHAPTER XIX.

DEAF, MUTE, AND BLIND CHILDREN.

Sec. 504. *Governor and superintendent of public instruction may contract for education of.*
Sec. 505. *Providing for payment of charges for educating.*
Sec. 506. *Not to apply if parent is able or if estate of child is sufficient.*

SEC. 504. The governor and superintendent of public instruction of this Territory are hereby authorized to contract with any suitable institution in any State or Territory of the United States, for the education of any deaf, mute or blind child between the ages of eight and sixteen years, who is actually a resident of this Territory, at an expense to the Territory of not more than three hundred dollars per annum for each such child, and for a term not exceeding four years for each such child, and upon the certificate of the said governor and superintendent of public instruction that such contract has been made, and that any such child is receiving instruction in such institution, the Territorial auditor shall draw his warrant on the Territorial treasurer for the payment of the fees of such institution in accordance with the terms of such contract.

SEC. 505. Whenever the parent or guardian of any deaf, mute or blind child, between the ages of eight and sixteen years, and actually a resident of this Territory, shall furnish to the governor and superintendent of public instruction of the Territory, satisfactory evidence that such child has been placed in a proper institution, either public or private, for the education of such child, it shall be the duty of said governor and superintendent of public instruction to certify such fact to the Territorial auditor, who shall thereupon draw his warrant upon the treasurer of the Territory for the fee of such institution annually, semi-annually or quarterly as may be required by the rules of such institution, subject to the limitations, as to amount and time for each scholar as prescribed in the preceding section. *Provided, however,* That in no case shall any warrant be drawn for the education of such child for a period longer than such child shall remain a pupil of such institution; and that a child once placed in any institution shall not be entitled to the aid provided for in this chapter, if such child be transferred to any such other institution without the consent of the governor or superintendent of public instruction shall have first been obtained to such transfer for good and sufficient cause shown.

SEC. 506. *Provided,* That the provisions of this chapter shall not apply to any deaf, mute or blind child whose parents, in the judgment of the governor and superintendent of public instruction, are amply able to so educate such child; nor shall they apply to any child whose estate is amply sufficient to care for and educate such child.

NOTE.—Act February 13th, 1874.

CHAPTER XX.

DIVORCE.

Sec. 507. *Causes for divorce not to affect legitimacy of children.*
Sec. 508. *Jurisdiction; practice in cases of.*
Sec. 509. *Residence of one year necessary.*
Sec. 510. *If collusion appear, no divorce decreed.*
Sec. 511. *If charges in complaint denied, tried by jury.*
Sec. 512. *Court may decree alimony and custody of children.*
Sec. 513. *If woman poor, county to pay costs.*
Sec. 514. *Proceeding as in chancery causes.*

SEC. 507. In any case in which a marriage has been or may hereafter be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided that either party at the time of their marriage was and continued to be impotent naturally, or that he or she had a wife or husband living at the time of such marriage, or that either party has committed adultery subsequent to such marriage, and that such husband and wife have not lived and cohabited together after having a knowledge of such adultery, or that such husband or wife has willfully absented himself or herself from such husband or wife, without any reasonable cause, for the space of one year, or that a husband has willfully deserted and absented himself from his wife, and departed from this Territory without intention of returning, or that either party have been guilty of habitual drunkenness for the space of one year, or been guilty of extreme cruelty, or been convicted of felony or other infamous crime, and such parties have not lived and cohabited together as husband and wife after such conviction, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract; but no such divorce shall in anywise affect the legitimacy of the children of such marriage.

SEC. 508. The district court, sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony by this chapter allowed, and the like process, practice, and proceedings shall be had as they are usually had in other cases of chancery, except as hereinafter provided.

SEC. 509. No person shall be entitled to a divorce in pursuance of the provisions of this chapter who has not resided in this Territory one whole year previous to filing his or her bill, unless the offence or injury complained of was committed within this Territory, or whilst one or both of such parties reside in this Territory.

SEC. 510. If it shall appear that the injury or offence complained of was by collusion of the parties for the purpose of obtaining a divorce, or that both parties had been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.

SEC. 511. In all cases of divorce, when the defendant shall appear and deny the charges alleged in the complainant's bill, the same shall be tried by a jury; but if the bill is taken as confessed, the court may proceed to a hearing of the cause by the examination of witnesses in open court, or may refer the matter to the master in chancery to take proofs; but any marriage which may have been celebrated in any other State or Territory may be sufficiently proved by the acknowledgments of the parties, their cohabitation as husband and wife, or other circumstantial evidence.

SEC. 512. When a divorce shall be decreed, it shall and may be lawful for the court to make such order touching the alimony and maintenance of the wife, the care and custody of the children, or any of them, as from the circumstances of the parties and nature of the case shall be fit, reasonable, and just; and in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance, or may refuse the payment of such alimony and maintenance in any other manner consistent with the rules and practice of the court, and may also grant alimony "*a pendente lite*," and the court may, on application, from time to time, make such alterations in the allowances of alimony and maintenance as shall appear reasonable and just.

SEC. 513. Any woman suing for a divorce who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs.

SEC. 514. The same rule of proceeding shall be had as in other cases in chancery, and upon the hearing the court shall have the power to decree a dissolution of the bonds of matrimony if the causes mentioned in this chapter are proven to exist.

NOTE.—Act January 12th, 1872, as amended January 24th, 1876.

CHAPTER XXI.

ELECTIONS.

ARTICLE I.

GENERAL ELECTION LAW.

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Sec. 515. That all male citizens of the United States above the age of twenty-one years, and all male persons of the same age who shall have declared their intention of becoming citizens, and who, under existing laws of the United States, may ultimately become citizens thereof, shall be deemed electors of this Territory, and be entitled to vote for delegate to congress, and for Territorial, district, county and precinct officers: *Provided,* They shall have resided in the Territory three months, and in the county where they may offer to vote, thirty days next preceding the day of election.

Sec. 516. No person under guardianship, *non compos mentis,* or insane, nor any person convicted of treason, felony, or bribery, in this Territory or any other Territory or State in the Union, unless restored to civil rights, shall be permitted to vote at any election.

Sec. 517. A general election shall be held in the several counties, townships or precincts, in this Territory, on the first Tuesday after the first Monday in November, 1876, and every two years thereafter, at which election shall be chosen all such officers as are by law required to be elected.

Sec. 518. No person shall be eligible to the office of delegate to congress, member of the council or house of representatives, unless he has been a resident of the Territory for one year.

Sec. 519. It shall be the duty of the commissioners of the several counties at their regular session immediately preceding said general election, to appoint three discreet and capable persons possessing the qualifications of electors, to act as judges of election in each township or precinct; and said board shall designate one or more of said judges whose duty it shall be to post up, or cause to be posted up, in each precinct or township notices of election, in the manner hereinafter provided. Said board of commissioners shall also set off and establish at said meeting, townships or precincts when the same may be necessary. And the clerk of said board shall make out and forward by mail, immediately after the appointment of said judges, a notice thereof in writing directed to each of said judges so appointed. In case there shall be no post office in any one or more of the townships or precincts, in any county, then, in that event the clerk shall forward notices of such appointment, by mail, to the post office nearest such precinct or township, directed to the judges as aforesaid. If in any of the townships or precincts, any of said judges refuse or neglect to serve, the voters of such township or precinct may elect a judge or judges to fill vacancies on the morning of the election, to serve at such election.

Sec. 520. The said judges shall choose two persons, having the same qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held in their respective townships, until other judges shall be appointed, as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall, from time to time fill such vacancies which may occur in the offices of judges of election in any township within their respective counties.

Sec. 521. The clerks of the several boards of county commissioners shall, at least thirty days before any general election, make out and forward by mail to such judge or judges as shall be designated by the county commissioners, three written notices for each township or precinct, said notices to be as near as circumstances will admit, as follows:

Notice is hereby given that on the first Tuesday after the first Monday of November, at the house of ———, in the county of ———, an election will be held for delegate to congress, members of the legislative assembly, county, township and precinct officers (naming the offices to be filled), which election will be open at 8 o'clock in the morning and continue open until 6 o'clock in the afternoon of the same day.

Dated this ——— day of ——— A. D. 18 (as the case may be).

Signed, A B, clerk of the board of county commissioners.

Sec. 522. The judge or judges aforesaid to whom such notices shall be directed as provided in section 521 of this article, shall cause to be put up in three of the most public places in each township or precinct the notices of election in such township or precinct, at least ten days previous to the time of holding any general election, and in cases where townships or precincts may be set off by leave as election precincts, said notices shall be posted as follows: one at the house where the election is authorized to be held, and the others at the two most public and suitable places in the township or precinct.

Sec. 523. Previous to votes being taken, the judges and clerks of election shall take and subscribe the following oath:

I, A B, do solemnly swear or affirm that I will perform the duties of judge of the election (or clerk, as the case may be) according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same.

Sec. 524. In case there shall be no judges or justices of the peace present at the opening of the election, or in case such judge or justice of the peace shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other, and to the clerks of the election, and the person administering the oath shall cause an entry thereof to be made, subscribed by him, and prefixed to the poll-book.

Sec. 525. At all elections to be held under this article, the polls shall be opened at eight o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; and at the opening of the polls one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the polls proclamation shall be made in like manner, and the polls shall be closed in a half hour; but the board may, in their discretion, adjourn the polls at twelve o'clock at noon for one hour, proclamation of the same being made.

SEC. 526. Every elector shall delivery, in full view of one of the judges of election, a single ballot or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill. Said ballots may be open or folded, as the voter may choose.

SEC. 527. The judges to whom any ticket may be delivered shall, upon the receipt thereof, pronounce, with an audible voice, the name of the elector, and if no objections be made to him, and the judges shall be satisfied that the elector is legally entitled to vote, he shall immediately put the ballot in the box, without inspecting the name thereon. The clerk of the election shall enter the name of the elector and number in the poll-book.

SEC. 528. It shall be lawful for any elector to vote for delegate to congress at any place of holding elections in this Territory, for members of the legislative assembly, and all other officers, at any place for holding elections within the particular limits for which such member of the legislative assembly and such other officers are to be elected: *Provided*, That an elector, qualified to vote for part and not all of the officers to be chosen at any election, shall vote an open ticket, and the judges may determine the legality of such vote.

SEC. 529. If and person offering to vote shall be challenged as unqualified by any judge or clerk of the election, or any other person entitled to vote at the same poll—and either judge may challenge any person offering to vote whom he shall know or suspect not to be qualified—the judges shall declare to the person so challenged the qualifications of an elector; if such person shall then declare himself duly qualified, and the challenge be not withdrawn, one of the judges shall then tender him the following oath: You do solemnly swear (or affirm, as the case may be), that you are qualified, according to the law regulating elections in this Territory, to vote for the officer (or officers, as the case may be), for whom you now propose to vote. And the clerks shall enter the names of all persons on the poll lists who are challenged and take such oath, and shall enter opposite their names the word sworn, in brackets, and such records shall be presumptive evidence of such vote.

SEC. 530. There shall be provided and kept by the judges of each election precinct (at the expense of the county) a suitable ballot-box, with a lock and key.

SEC. 531. There shall be an opening in the lid of such box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls the ballot-box shall be carefully examined by the judges of election that nothing shall remain therein; it shall then be locked, and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purpose hereinafter mentioned.

SEC. 532. Upon the adjournment of the polls the clerk shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

SEC. 533. The ballot-box shall be opened and the poll-books placed therein, and such box shall then be locked, and a covering with a seal placed on the lid of such box so as to entirely cover the same, and the key delivered to one of the judges, and the box to another, to be designated by the board.

SEC. 534. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the care of the box shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly in that condition deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll-books taken out, and the box again locked.

SEC. 535. As soon as the polls of the election shall be finally closed the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and shall continue until completed.

SEC. 536. The canvass shall commence by a comparison of the poll lists from the commencement, and the correction of any mistakes that may be found therein, until they shall be found to agree; the box shall then be opened and the ballots found therein counted by the judges, unopened, except to ascertain whether each ballot is single; and if two or more shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed, and if, on a comparison of the count with the poll lists and the appearance of such ballots, a majority of the judges shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be rejected.

SEC. 537. If the ballots in the box should be found to exceed in number the whole number of votes in the poll lists they shall be placed in the box, (after being purged after the manner above stated), and one of the judges shall publicly draw out and destroy therefrom so many ballots unopened as shall be equal to such excess.

SEC. 538. The ballots and the poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll-books the names of every person voted for, and, at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made, as near as circumstances will admit, in the following form, to-wit:

At an election held at the house of A B, in the township or precinct of ———, in the county of ———, and the Territory of Montana, on the ——— day of ———, A. D. 18—, the following named persons received the number of votes annexed to their respective names for the following described offices, to-wit:

A B had ——— votes for delegate to congress.
J D had ——— votes for member of the legislative council.
R L had ——— votes for member of the house of representatives.
(And in like manner for any other person voted for.)

Certified by us. Attest

A B and C D, Clerks of Election.
M N, O P, Q R, Judges of Election.

SEC. 539. The judges of election shall then enclose and seal one of the poll-books, under cover, directed to the clerk of the board of county commissioners of the county in which such election was held, and the packet thus sealed shall, within three days from the closing of the polls, be conveyed by one of the judges or clerks of election, to be determined by lot, to the post office nearest the house in which said election for such precinct was held, and register and mail the same to the clerk of the board of county commissioners, and the other poll-books, together with the ballot-box, shall be deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon, and the said poll-book shall be open to the inspection of any elector at any time thereafter who may desire to examine the same.

SEC. 540. If any judge or clerk, after being selected by the judges of election to convey the poll-books of such election to the post office nearest the house in which said election was held, and mail the same, as provided for in section 539 of this article, shall fail, refuse or neglect to convey and mail the said poll-books, safe with seal unbroken, he shall for every such offense, when convicted thereof, pay the sum of five hundred dollars, and be imprisoned in the county jail for a period not exceeding three years, said fine to be recovered in a civil action in the district court in the name of the county commissioners.

SEC. 541. After the fifteenth day after the close of any election held under the provisions of this article, or sooner if all the returns shall be received, the chairman of the board of county commissioners, or in his absence any other member of the board, shall, taking to his assistance the probate judge or a justice of the peace, and one other officer of the county, or any county officer, proceed to open the returns and make abstracts of the votes. Such abstracts of votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on another sheet; and the abstract of votes for Territorial and district officers shall be on another sheet; and the abstract of votes for county and township officers shall be on another sheet. And it shall be the duty of the clerk of said board of county commissioners immediately to make up a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and township officers, respectively, and to deliver such certificates to the persons entitled to them by mailing the same in "registered" letters to the address of such persons respectively: *Provided*, That when a tie vote shall exist between two or more persons for any district or county office, the clerk of the board of county commissioners shall immediately give notice of another election, giving at least ten days' notice. And it shall be the duty of the clerk of the board of county commissioners of such county, on receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election shall be entitled for their services, and lay the same before the county commissioners at their next session, and the board of county commissioners shall order the compensation aforesaid to be paid out of the county treasury.

NOTE.—Last section preceding is from Act of February 15th, 1877.

Sec. 542. The clerk of the board of county commissioners, immediately after making out the abstract of votes given in his county, shall make a copy of each of said abstracts, and transmit the same by mail as a registered package to the auditor of the Territory at the seat of government, and it shall be the duty of the United States marshal and treasurer of the Territory in the presence of the governor to proceed within thirty days after the election, and sooner if the returns be received, to canvass the votes given for delegates to congress: *Provided,* That in case the United States marshal can not agree as to the number of votes that two or more persons are entitled to for delegate to congress, then in that event the governor shall decide who has the highest number of votes, and shall issue a certificate of election to such person, under his hand and the seal of the Territory, countersigned by the secretary. In case there shall be no choice by reason of two or more persons having an equal and highest number of votes, then the governor shall by proclamation order a new election.

Sec. 543. If the returns of the election of any county in this Territory shall not be received at the office of the auditor of the Territory within thirty days after the election, the said auditor shall forthwith send a messenger to the clerk of the county commissioners, whose duty it shall be to furnish the said messenger with a copy of such returns, and the messenger shall be paid out of the county treasury of said county the sum of twenty cents per mile for each mile he shall necessarily travel in going to and returning from said county, and if any officer or officers, whose duty it is to forward returns of any election to the board of county commissioners, auditor or other officer of the township, county, district, or Territory, shall omit, neglect, or refuse to perform such duty as is by law required, he shall be liable to pay, in an action brought therefor, in any proper court, the expenses of sending for and procuring such returns or poll-books as he is by law required to forward, and he shall be entitled to no exemption whatever on such judgment, and he or they shall moreover be deemed guilty of a misdemeanor, and being thereof convicted, shall be fined not less than one hundred nor more than five hundred dollars, and shall be imprisoned not less than one day nor more than six months in the county jail, and it is hereby made the duty of the canvassing board to send for and procure such returns before canvassing the votes, if the same can be procured.

Sec. 544. Any person who shall receive a certificate of his election shall be at liberty to resign such office though he may not have entered upon the duties thereof, or taken the requisite oath of office. And when any vacancy shall happen in the office of member of council or house of representatives by death, resignation, or otherwise, and a session of the legislature is to take place before the next regular election, the governor shall issue a writ of election directed to the clerk or clerks of the county or counties in which such vacancy shall happen, commanding him to notify the judges in his county or counties to hold a special election to fill such vacancy or vacancies at a time appointed by the governor.

Sec. 545. Where two or more counties are united in a council or representative district, or for the election of any other officer, the canvassing boards of the counties interested shall canvass the vote of said joint officer or officers the same as for other county officers. It shall be the duty of the county clerk of the board of county commissioners of the county or counties last established to make certified abstracts of the canvass, and immediately forward a copy of said abstract or abstracts by mail, as registered package, to clerk of senior county, and the clerk and probate judge, or any other county officer, including the clerk, shall at once canvass said votes, and the clerk of the senior county shall at once issue certificates of election to the person or persons having the highest number of votes entitled thereto. And for the purpose of this article the county first created shall be deemed the senior county, and when all the counties were created by the same act, the first named therein shall be deemed the senior county. That section 31, and so much of section 32 of "An act to provide for biennial elections," approved February 11, 1876, as refers to mileage to be paid to the clerk of the board of county commissioners for attending at another county to canvass votes, be and the same is hereby repealed.

NOTE.—Act February 3d, 1877, last section.

SEC. 546. There shall be allowed out of the county treasury of each county to the several judges and clerks of election, when engaged in any election, three dollars per diem; to the person appointed to post up notices of election, and to the judge or clerk conveying poll books to the post office and mailing the same.

SEC. 547. If any judge or clerk of election, or any other person in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this article, he shall pay to the county a sum not less than fifty nor more than one thousand dollars, and be imprisoned in the county jail until such fine is paid, the same to be recovered by civil action in the name of the county commissioners of the proper county, for the use of the common schools of said county.

SEC. 548. The term of office of all district, county, and township officers elected under the provisions of this article shall begin on the third Monday in December next ensuing after the election. The term of office of the county treasurer shall begin on the first Monday in March, next ensuing their election, and the county commissioners of the several counties are hereby authorized and empowered to fill any and all vacancies in said office, created by the expiration of the term of office of any incumbent, or from any other cause.

SEC. 549. In all elections the person having the highest number of votes for any office shall be deemed to have been elected.

SEC. 550. In counting the votes the judges of election shall disregard mis-spelling or abbreviation of the names of candidates for the office, if it can be ascertained from such votes for whom they were intended.

SEC. 551. All contests of county and township officers shall be tried in the proper county, and when an elector shall wish to contest such an election he shall file with the clerk of the board of county commissioners within ten days after such person shall have been declared elected, a statement in writing, specifying the grounds of contest, verified by affidavit, and such clerk shall issue to the contestant a notice to appear at time and place specified in notice, before the district court, which notice, with a copy of such statement, shall be delivered to the sheriff, who shall, within five days, serve the same on the contestor by delivering to him a copy of such notice and statement, or by leaving such copy at his usual place of residence. That in all contested election cases, or rights thereto existing, or which may hereafter occur, when the said notice shall not have been served and given in compliance herewith, the same shall be a bar to any and all persons making such contests, and to all actions and rights of action thereto.

SEC. 552. The district judge at the time specified in the notice (and it shall appear by the sheriff's returns that notice has been duly served on the contestor), shall proceed to try such contest. Each party shall be entitled to subpœnas, and subpœnas *duces tecum*, as in ordinary cases in law, and the district court shall hear and determine in such manner as shall carry into effect the expressed will of a majority of the legal voters, as indicated by their votes for such office, not regarding technicalities or error in spelling the name of any candidate for such office, and the clerk of said court shall issue a certificate to the person declared to be elected by said court, which shall be presumptive evidence of the right of said person to hold such office, and he shall be entitled to enter upon and hold said office until such decision shall be reversed on appeal.

SEC. 553. Resignations may be made as follows:

First. By all officers elected to the legislative assembly, to the governor of the Territory.

Second. By all township and county officers, to the county commissioners of their respective counties.

Third. By all other officers holding office by appointment to the body or officers that appointed them.

SEC. 554. Every office shall become vacant on the happening of any of the following events before the expiration of the term of such office:

First. Ceasing to be an inhabitant of the Territory, county, or township for which he shall have been elected or appointed, or within which the duties of his office are to be discharged.

Second. His conviction of any infamous crime, or of any offence involving the violation of his official oath.

Third. His refusal or neglect to take the oath of office, or to execute his official bond, or deposit such oath or bond within the time prescribed by law.

SEC. 555. The governor shall also declare vacant the office of every official required by law to execute an official bond, when a judgment shall be obtained against such officer for a breach of the condition of such bond.

SEC. 556. When a vacancy shall occur during a recess of the legislature, in any office which the legislature is authorized to fill by election, or which the governor, subject to confirmation of legislative council, is authorized to fill, the governor, unless it be otherwise specially provided, may appoint some suitable person to perform the duties of such office.

SEC. 557. When at any time there shall be in any of the county or township offices no officer duly authorized to execute the duties thereof, some suitable person shall be appointed by the county commissioners to perform the duties of said office: *Provided,* That if there is no board of county commissioners in any county, the governor may, on notice of such fact, create such board.

SEC. 558. Every person so appointed, in pursuance of the last two preceding sections, shall, before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place they shall be appointed, and they shall continue to exercise and perform the duties of the office to which they shall be appointed until such vacancy shall be regularly supplied as provided by law.

SEC. 559. That in addition to the duties already assigned them, it shall be the duty of the board of county commissioners of each county to cause to be provided for the several election precincts in each county, poll books, after the forms hereinafter prescribed.

SEC. 560. That it shall be the duty of the clerk of said board to forward by mail, as a registered package, to one of the judges of election so appointed, in each precinct, at least ten days prior to any general election, and five days prior to any special election, two copies of such blank poll-books for the use of the judges of such township or precinct.

SEC. 561. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having care of the box shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly in that condition deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll books taken out, and the box again locked. That the judges having the custody of the key, box, and poll-books, who shall refuse or neglect to comply with the requirements of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than five hundred dollars, nor more than ten thousand dollars, or imprisonment not less than three months, or more than one year, or by such fine and imprisonment, as a court of competent jurisdiction may see fit to impose.

SEC. 562. Such poll-books and oaths shall be in the following form:

TERRITORY OF MONTANA, } ss.
County of ———, }

We, ——— and ———, do solemnly swear, that we will perform the duty of judges of the election according to law, and to the best of our ability, and that we will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same, so help us God.

——— ——— } Judges.
——— ——— }

Subscribed and sworn to before me, ———, this ——— day of ———, A. D. 18 –.

TERRITORY OF MONTANA, } ss.
County of ———, }

We, ——— and ———, do solemnly swear, that we will faithfully perform the duties of clerks of the election, according to law, and to the best of our ability, and that we will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same, so help us God.

——— ——— } Clerks.
——— ——— }

Subscribed and sworn to before me, this ——— day of ———, 18—.

POLL-BOOKS OF PRECINCT NO. ——.

NO.	NAMES.	NO.	NAMES.

At an election held at ————, in precinct No. ——, in the county of ————, in the Territory of Montana, the following named persons received the number of votes annexed to their respective names, for the following offices, to-wit:

Certified to by us.

——— ———
——— ——— Judges.
——— ———
——— ———
——— ——— Clerks.
——— ———

SEC. 563. No officer of this Territory, nor of any county within this Territory, shall establish a precinct within the limits of any county not fully organized, or at any Indian agency, or at any trading post in the Indian country, or on any Indian reservation whatever; and any county or Territorial officer violating the provisions of this section shall be guilty of a misdemeanor, and fined in a court of competent jurisdiction in a sum not less than five hundred dollars, or more than two thousand dollars.

SEC. 564. Any county or Territorial officer whose duty it is, under existing laws to open returns and make abstracts of votes, who shall receive and count the returns from any pretended election precinct which may be established in contravention of the preceding section of this article, shall be guilty of felony, and be punished by fine not less than one thousand nor more than five thousand dollars, and be imprisoned in the Territorial penitentiary not less than one nor more than five years.

SEC. 565. Any judge, clerk, or county commissioner, who shall fail, refuse, or neglect to perform any of the duties imposed upon him by the provisions of this article, shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail for a period not exceeding three years, or both such fine and imprisonment, at the discretion of the court, unless, for good cause shown, both such fine and imprisonment may be remitted by the court.

SEC. 566. Any person guilty of stuffing any ballot box, either by false bottoms or in any manner whatever, before the votes are counted, or while being counted, and any judge of any election who shall knowingly count or read off the votes falsely, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the Territorial prison for each and every offense so convicted, for a term not less than one nor more than five years.

Sec. 567. If any person or persons, at any election held by virtue of any law of this Territory, shall, either by force, fraud, stealth, or otherwise, destroy, obtain, or attempt to obtain possession of any ballot-box, or any ballot or ballots, therein deposited, or any poll-book, tally-list, or other articles kept and used by the judges and clerks in conducting such election, while the voting at such election is going on during the day of election, or either before or after the ballots have been taken out of the box and counted by the judges of election, shall be deemed guilty of a felony, and upon conviction thereof, be imprisoned in the Territorial prison for each and every offence so convicted of, for a term of not less than one nor more than five years.

Sec. 568. Any person who shall vote or attempt to vote in the name of any other person, other than his own, and any person who causes, aids, or abets any person so to vote or attempt to so vote, shall, upon conviction thereof, be punished for each offence by imprisonment in the Territorial prison not less than one year nor more than five years.

Sec. 569. If any person not having the legal qualifications of a voter shall fraudulently vote, or shall fraudulently attempt to vote at any election, such person, on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than five years.

Sec. 570. If any elector shall vote more than once at any election, or shall knowingly hand in two or more tickets folded together, or shall attempt to vote more than once at the same election, he shall, on conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than five years.

Sec. 571. If any person shall directly or indirectly use any threats, menace, or force, or any corrupt means or device at or previous to, or during any election held pursuant to any election laws of this Territory, towards any elector, to hinder or deter him from voting at such election, or shall attempt by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, he shall, upon conviction thereof, be fined in any sum not less than fifty nor exceeding five hundred dollars.

Sec. 572. Any person willfully, corruptly, or falsely swearing or affirming before the board of judges of election, or any member thereof, or the clerk, while in session or in holding an election, shall be deemed guilty of perjury, and on conviction shall be punished. If any member of any board of judges, or clerks, of election, or any other person in any manner concerned in conducting an election, shall willfully and corruptly violate any of the provisions of this article, the penalty for which is not herein prescribed, or be guilty of any fraud, deceit, or abuse in the execution of the duties of his office, the penalty for which is not herein prescribed, he shall be punished for each and every offence whereof he shall be convicted, by imprisonment in the Territorial prison for a term not less than one nor more than five years; or shall pay a fine of not less than fifty nor more than five hundred dollars, in the discretion of the court.

Note.—The preceding sections of this chapter, except where otherwise specially noted, are from the Act of February 11th, 1876.

ARTICLE II.

CONCERNING PURCHASE AND SALE OF VOTES, ETC.

Sec. 573. *Purchasing or attempting to purchase votes forbidden.*
Sec. 574. *Selling or attempting to sell votes forbidden.*
Sec. 575. *Paying or contributing for nomination or election forbidden; except necessary expenses; official oath.*
Sec. 576. *Punishment for violating sections 573 or 574.*
Sec. 577. *Refusal to take oath forfeits office; swearing falsely punished as perjury.*
Sec. 578. *Duty of district attorney.*

SEC. 573. That no person shall purchase, or attempt to purchase, either with money or any other valuable thing, the vote of any elector of the Territory of Montana.

SEC. 574. That no elector of the Territory of Montana shall sell, or attempt to sell, either for money or any other valuable thing, his vote to any person whatever.

SEC. 575. That no person who shall hereafter be a candidate for any office whatever in the Territory of Montana, shall pay or contribute, either directly or indirectly, any money or other valuable thing, or knowingly allow it to be done by others for him, either for the nomination, election, or appointment thereto, except for necessary expenses, as follows, to-wit:

First. For printing and traveling expenses.

Second. For the dissemination of information to the public.

Third. For political meetings, demonstrations and conventions.

The foregoing expenses may be incurred either in person or through other individuals or committees of organizations duly constituted for the purpose, but nothing contained in this article shall be so construed as to authorize the payment of money or other valuable thing for the vote or influence of any elector of this Territory, either directly or indirectly, at any election or nominating convention, or for any corrupt purpose whatever, incident to an election; and all officers hereafter elected or appointed, shall, before entering upon the duties of their respective offices, take and subscribe the following oath:

"I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the organic act of the Territory of Montana, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this Territory, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law."

The foregoing oath shall be administered to the members of the council and house of representatives in the hall of their respective houses, by a judge of the supreme court, and filed by him in the office of the secretary of the Territory.

In the case of all other Territorial officers, this oath shall be administered by the governor, and filed in the office of the secretary of the Territory. In the case of all other officers this oath shall be administered by some person authorized by law to administer oaths, and shall be filed in the office of the clerk of the county in which said officer was elected.

SEC. 576. Every person violating either section 573 or 574 of this article, or both, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one hundred dollars, nor more than five hundred dollars, and to imprisonment in the penitentiary for not less than three months, nor more than one year, or both or either, at the discretion of the court.

SEC. 577. Any person refusing to take the oath prescribed in section 575 of this article, shall forfeit his office; and any person who shall be convicted of having sworn or affirmed falsely, or of having violated said oath or affirmation, shall be guilty of perjury, and be punishable therefor as provided by law, and be forever disqualified from holding any office of trust or profit within this Territory.

SEC. 578. That it is hereby made the duty of the district attorney, for that district in which an offence against any of the provisions of this article may have been committed, to bring an action in the name of the Territory of Montana, against any person or persons so offending.

NOTE.—Act of February 8th, 1876.

CHAPTER XXII.

FEES.

ARTICLE I.

FEES AND DUTIES OF DISTRICT CLERKS.

Sec. 579. *Salary payable quarterly in full compensation.*
Sec. 580. *Salaries of deputies.*
Sec. 581. *Additional fees.*
Sec. 582. *Penalty if other fee or reward be received.*
Sec. 583. *Fees to be paid by parties to action.*
Sec. 584. *Fees so paid taxed as costs.*

SEC. 579. That the clerks of the several judicial districts of this Territory shall, for each of said districts, be entitled to receive for their compensation for all services required of them by law as such, a salary of sixteen hundred and fifty dollars, payable quarterly out of the contingent fund of the county in which the United States district courts are held, to-wit: The counties of Deer Lodge, Madison, and Lewis and Clarke, by warrants drawn on said fund and payable in their usual course as other warrants thereon are paid, and which salary shall be in full compensation for all such services as such clerks of said courts in said counties, and for all services in all civil and criminal causes, or in which any individual, county, or the Territory, or any officer therof, may be a party, or in any way interested or liable for costs.

SEC. 580. When such clerks may have a deputy in any other counties hereinafter named, such deputies shall be entitled to receive for their compensation for their services as deputy clerks of said courts in said counties, the following salaries, to-wit: In the county of Missoula, five hundred dollars; in the county of Beaver Head, five hundred dollars; in the county of Jefferson, three hundred and fifty dollars; in the county of Gallatin, five hundred dollars; in the county of Custer, five hundred dollars; in the county of Meagher, two hundred and fifty dollars; and the county of Choteau, when courts are held therein, three hundred and fifty dollars, to be paid quarterly by warrants, drawn on the contingent fund of said counties, and paid as other warrants thereon, except in the county of Missoula, where such warrants shall be drawn on the current expense fund; and such salary shall be for the use and benefit of such deputies. And where such clerks shall have no deputy residing in any of said counties last named, such salary shall not be paid; and nothing in this article shall be so construed as to authorize any compensation for any deputy in said counties of Deer Lodge, Madison, or Lewis and Clarke. And it is provided that said salaries shall be in full payment for all services as clerks in said counties in all civil and criminal causes, or in which any individual, county, or the Territory, or officer thereof, shall be a party or in any way liable for costs.

SEC. 581. In addition to the salary of said clerks and deputies in the foregoing sections they shall be entitled to receive: For taking depositions, per folio, fifteen cents; for taking acknowledgments to conveyance, one dollar; for taking, filing, and recording declaration of intention to become a citizen, two dollars; for final naturalization papers, three dollars; for making transcript on appeal, where they exceed seventy-five folios, ten cents per folio for all in excess of seventy-five folios.

SEC. 582. That the fees and salaries in this article provided shall be all the compensation by law allowed such clerks and deputies for all services which they are required to, or by law can, perform as such clerks; and any such clerk, or deputy, who shall receive any fee, or reward, or salary not specifically herein provided for, shall be liable to the county, Territory, or person paying the same for ten times the sum so paid to such clerk or deputy, to be recovered by civil action, and shall be found [deemed] guilty of a misdemeanor, and, on conviction, shall be fined in any sum of not less than one hundred nor more than five hundred dollars, and shall be imprisoned in the county jail for a term of not less than thirty nor more than ninety days.

SEC. 583. That upon the commencement of any civil action in the district court, a plaintiff, not prosecuting *in forma pauperis*, shall deposit with the clerk of the court, or his deputy, the sum of seven dollars and fifty cents, and take his receipt therefor, which he shall file with the treasurer of the county in which such complaint is filed, and before the rendition of final judgment in the action in his, or their, favor, such plaintiff, or plaintiffs, shall so deposit the further sum of two dollars and fifty cents, and take and file the receipt therefor as aforesaid; and the defendant, or defendants, upon entering his, or their, appearance in such action, unless defending *in forma pauperis*, shall pay the sum of two dollars and fifty cents to the said clerk, and take and file the receipt therefor as aforesaid; and before judgment shall be rendered therein in favor of the defendants, he, or they, shall further pay the sum of seven dollars and fifty cents to such clerk, and take and file the said receipt as aforesaid; and no party not having paid the said several sums as required, shall be permitted, after such failure, to file further papers, or require the issuance of any process, until such payment has been made; but such prepayment shall not be required of any officer prosecuting for the people of the Territory, or any municipality thereof. The moneys so paid to the said clerks or their deputies shall be forthwith paid into the county treasury to the credit of the contingent fund thereof; except that, in the county of Missoula, it shall be credited to the current expense fund.

SEC. 584. Such sums so paid by said parties to such actions shall be taxed and recovered as other costs in the action.

NOTE.—Act of February 21st, 1879.

ARTICLE II.

FEES OF SHERIFFS.

Sec. 585. Fees itemized for sundry services.
Sec. 586. Fees for transporting prisoners to penitentiary to be paid by Territory.

SEC. 585. That it shall be lawful for sheriffs to demand and receive the following fees: For transporting prisoners, per mile, including diet and all expenses, fifty cents; for summoning jurors, each, fifty cents; for serving summons, including copy of complaint and summons on first party, seventy-five cents; for serving subpœna and copy, each witness fifty cents; for advertising property for sale, one dollar and fifty cents; for every mile necessarily and actually traveled, twenty cents; for serving and returning *scire facias*, one dollar; for committing or discharging prisoner, to or from jail, fifty cents.

NOTE.—Act April 28th, 1873.

The dieting of prisoners per day shall not hereafter exceed two dollars per day, and it shall not be in any sum exceeding what the county commissioners believe to be the actual value thereof.

NOTE.—Act February 13th, 1874.

Attending before any judge with prisoner on writ of *habeas corpus*, one dollar; for serving writ of possession, with aid of *posse comitatus*, five dollars; for serving the same without such aid, two dollars; for attending district court, per day, three dollars; for attending probate court, by order of court, per day, one dollar and fifty cents; for serving execution or attachment, one dollar; for executing and acknowledging deed of sale of real estate, three dollars; for making certificate of sale, previous to execution of deed, one dollar; for taking replevin, forthcoming, or other bond, one dollar; for executing *capias*, or warrant in criminal cases, one dollar; for serving declaration in ejectment, and proper return, for each defendant, one dollar.

For commissions on money collected without sale, by the sheriff, on all sums under five hundred dollars, two per cent.

On any sum between five hundred and one thousand dollars, he shall be allowed on the first five hundred dollars two per cent., and one and one-half per cent. on all such other sum, and on all sums over one thousand dollars he shall be allowed, in addition to the percentage on the first one thousand dollars, one per cent.

Commissions on money collected by sale, by sheriff, on any sum under one thousand dollars, two per cent.

On any sum over one thousand dollars and up to five thousand, he shall receive two per cent. for the first one thousand dollars, and one per cent. on all such additional amount.

On all sums over five thousand dollars he shall receive the fees above allowed for five thousand dollars and one-fourth of one per cent. on all such additional amounts.

NOTE.—Act April 28th, 1873.

SEC. 586. That all fees and expenses, as defined by law, accruing to the sheriff of any county in this Territory for transporting prisoners, convicted under the laws of this Territory, from the jail of any county to the Territorial prison, shall be paid by the Territory of Montana, and not by any county thereof, and the Territorial auditor is hereby directed to draw his warrant upon the Territorial treasurer in favor of the sheriff in payment of such fees and expenses, upon any sheriff filing with him his account therefor, which shall state the name of the prisoner transported, and the county jail from which he was transported and the distance necessarily traveled by such sheriff in transporting such prisoner, which account shall be verified by the oath of such sheriff.

NOTE.—Act February 21st, 1879.

ARTICLE III.

FEES OF JURORS AND WITNESSES.

SEC. 587. That every juror and witness attending in his own county in any court of record, or before a commissioner or referee, shall receive for such service and attendance per day, three dollars; for mileage in going to and returning, per mile, twenty cents: *Provided,* That no per diem shall be allowed to special jurors summoned, who shall not serve in the trial of a cause, and are not required to remain in attendance on the court.

NOTE.—Act April 29th, 1873.

ARTICLE IV.

FEES OF PROBATE JUDGE AND CLERK.

SEC. 588. The judge of the probate court shall receive the following fees in probate matters: For appointing executors, administrators, guardians, or trustees, one dollar and fifty cents; for granting letters testamentary or of administration, affixing seal thereto, and recording the same, one dollar and fifty cents; administering oath to each executor or administrator, twenty-five cents; for each certificate, one dollar;

taking proof of a codicil, credit proved substantially, one dollar; endorsing certificates of probate on codicil, thirty cents; recording any will, codicil, or other paper not herein otherwise provided, per folio, twenty cents; examining and approving each inventory, sale bill, or account current, filed by executor or administrator, one dollar; entering the settlement of executors and administrators on the order book, one dollar; each copy of the settlement of executors or administrators with certificate and seal, one dollar and fifty cents; for each decree limiting the time for exhibiting the claims of creditors, fifty cents; for each order of distribution, seventy-five cents; for copies of exemplifications of records, per folio, twenty cents; official certificate and seal, seventy-five cents; making out an order for publication, fifty cents; for allowing an appeal to district court, forty cents; for issuing each special writ or summons with seal, one dollar and fifty cents; for administering oath to each witness, twenty-five cents; for swearing any person to affidavit and certificate thereof, fifty cents; issuing subpœna under seal, fifty cents; enter each order, decree of judgment, seventy-five cents; filing paper belonging to the settlement of any estate, twenty-five cents; issuing letters of guardianship or trusteeship, one dollar and fifty cents; taking and approving bond of guardianship or trustee, one dollar and twenty-five cents; taking any bond not hereinbefore specified, one dollar; revoking letters testamentary, guardianship, or trusteeship, one dollar; swearing each jury, forty cents; taking acknowledgments of instruments of writing, one dollar; every original writ under seal not otherwise provided for, fifty cents; precept for jury, fifty cents; taking verdict, forty cents; allowing or disallowing demand against an estate, one dollar; every continuance, fifty cents; deciding each motion, fifty cents; solemnizing marriages, ten dollars; for all civil cases and other than probate matters, the same fees as are allowed to clerks of district court in similar cases; for trying each case, three dollars.

NOTE.—Acts of May 3, 1874, and February 13th, 1874.

ARTICLE V.

FEES OF CONSTABLES.

SEC. 589. That the fees of constables shall be the same as those allowed the sheriffs for like services.

NOTE.—Act April 29th, 1873.

ARTICLE VI.

FEES OF CORONERS.

SEC. 590. That the fees of coroner shall be as follows:

For each day on inquest, five dollars; for all other services, the same fees as are allowed by law to other officers for like services.

NOTE.—Act May 2d, 1873.

ARTICLE VII.

FEES OF NOTARIES PUBLIC.

SEC. 591. That the fees of notaries public shall be as follows: For noting a bond, bill of exchange, or promissory note for protest, one dollar; for each protest and record of same, one dollar; for each notice of protest, one dollar; for each certificate and seal, one dollar; for all other cases the same as allowed to justices of the peace for like services.

NOTE—Act May 2d, 1873.

FEES OF JUDGES AND CLERKS OF ELECTION.

[*See Sec. 546, Article I, Chapter XXI.*]

ARTICLE VIII.

FEES OF MASTERS IN CHANCERY.

SEC. 592. For hearing each application for a writ of injunction or other writ, five dollars; for report and opinion in every case referred to him to take proof, five dollars; for taking depositions either in cases referred or to be used in courts, for each one hundred words, including certificates, thirty cents; for the attendance to take depositions at the request of any party, whether depositions are taken or not, per diem, five dollars.

NOTE.—Act of January 12th, 1872.

ARTICLE IX.

FEES OF COUNTY TREASURER.

SEC. 593. The county treasurer shall be entitled to the following fees and percentage on money collected: Twelve and one-half per cent. on the first three thousand dollars; ten per cent. on the amount between three and four thousand dollars; six per cent. on the amount between four and five thousand dollars; four per cent. on all sums over five thousand dollars and under ten thousand dollars; three per cent. on all sums over ten thousand dollars; four per cent. for receiving or paying out all moneys other than taxes and school funds; for every mile traveled, in going to or returning, to make settlements with Territorial auditor and treasurer, thirty cents per mile; for issuing each license, fifty cents, to be paid by the party to whom issued: *Provided, however,* That if the fees and percentage of such treasurer and collector exceed the sum of twenty-five hundred dollars per year, he shall pay all such sums in excess of twenty-five hundred dollars into the county treasury for the benefit of the contingent fund; nor shall any treasurer, whose fees and percentage exceed said sum in one year, be entitled for any part of one year to a greater compensation than at the rate of twenty-five hundred dollars per year; and it shall be the duty of the county treasurer now in office, at the end of each year commencing from the time this article goes into effect, to make a full statement of all fees and percentage collected by him to the board of county commissioners, and all treasurers hereafter appointed or elected shall make such statement at the end of each year, commencing the first day of their term of office.

NOTE—Act April 30th, 1873.

ARTICLE X.

FEES OF COUNTY CLERK AND RECORDER.

Sec. 594. *Fees as clerk.*
Sec. 595. *Fees as recorder.*

SEC. 594. The county clerk shall be entitled to receive the following fees:

For like service the same fees as the clerk of the district court, except as specially herein provided.

For recording the proceedings of the board of county commissioners, for each folio of one hundred words, twenty-five cents; for issuing one warrant for each account allowed by commissioners, five cents; each additional warrant issued on the same account, to be paid by the party requiring the same to be divided, ten cents; issuing, numbering and countersigning, with stub attached thereto, each, five cents; for taking proof in case of estray, and certificate of same, one dollar; advertising, including copy for newspaper publication, one dollar and fifty cents; each certificate and seal, one dollar; canceling each warrant and entering the same, five cents; for making out poll-books, for each precinct, two dollars; for making abstract of election returns, for each folio, twenty cents.

For any other service required by law, and not herein provided for, such compensation as the board of county commissioners may allow: *Provided,* no per diem shall be allowed for attendance on the board of county commissioners.

SEC. 595. The county recorder shall be entitled to the following fees to-wit:

For filing and recording each instrument of writing allowed by law to be recorded, for first folio one hundred words, fifty cents; for each additional folio, thirty cents; for each entry in index, fifteen cents; certificate of record of title, seventy-five cents; recording marriage certificate, one dollar; acknowledgment, certificate, and seal, one dollar; for copies of record, per folio, twenty cents; for each search of record, twenty-five cents; abstract of title, first conveyance, seventy-five cents; for each subsequent conveyance, forty cents; abstracts from original entries, each, seventy-five cents; record of quartz claim, three dollars.

All other services required by law, not otherwise provided for, to be regulated by the board of county commissioners.

NOTE.—Act April 29th, 1873.

ARTICLE XI.

FEES OF DISTRICT ATTORNEYS.

SEC. 596. That the district attorneys of each of the judicial districts established by law shall be entitled to demand and receive for services performed by them the following fees:

For collections for Territory or county, on all sums under five hundred dollars, ten per cent.; on all sums over five hundred dollars, five per cent.; for conviction of misdemeanor, when the attorney appears in person or by deputy, ten dollars; for conviction of felony, twenty dollars; for conviction in capital cases, one hundred dollars; for per diem for each day necessarily employed attending causes on change of venue, ten dollars; docket fees in all civil cases not above specified, where the district attorney is required to defend or prosecute in the district court, fifteen dollars; mileage for every mile necessarily and actually traveled to attend district court, to be paid out of Territorial treasury, upon the certificate of the judge of district court, twenty cents; salary per annum, payable quarterly out of the Territorial treasury, out of any moneys not otherwise appropriated, one thousand dollars; for drawing each indictment, ten dollars: *Provided,* That no fee shall be allowed for drawing any indictment that may be quashed. The above fees to be taxed as costs in cases.

NOTE.—Act May 3d, 1873.

ARTICLE XII.

FEES OF JUSTICE OF THE PEACE.

SEC. 597. Justices of the peace shall receive the following fees for the following services:

Docketing each case, twenty cents; issuing summons, one person, twenty-five cents; each additional person, fifteen cents; order of arrest, twenty-five cents; attachment for contempt, twenty-five cents; issuing attachment for one person, fifty cents; each additional, twenty-five cents; mittimus, fifty cents; writ of replevin, affidavit and bond for same, one dollar; subpœna for one person, twenty-five cents; each additional person, fifteen cents; venire, fifty cents; execution, fifty cents; writ of restitution, or re-restitution, fifty cents; warrant for one person, in criminal cases, fifty cents; each additional person, twenty-five cents; order on jailer for person or persons, twenty-five cents; writ of forcible entry and detainer, or forcible detainer, fifty cents; for any other required by law, fifty cents; enter adjournments on docket, twenty-five cents; enter judgment, twenty-five cents; discontinuance, or satisfaction of judgment, twenty-five cents; transfer judgment on docket, twenty-five cents; appointing guardian *ad litem,* twenty-five cents; taking and entering verdict, twenty-five cents; each motion decided by justice, twenty-five cents; making up docket, drawing certificates and affidavits, per folio, twenty cents; each oath administered in case, ten cents; certifying depositions, transcript of docket entries, copies of pleadings, or writings on file, not otherwise provided, per folio, twenty cents; filing each paper required by law, ten cents; taking and approving each bond or undertaking, fifty cents; appointing special constable, twenty-five cents; appointing appraiser, twenty-five cents; certified copies of appraisement, twenty-five cents; acknowledging deeds or other instruments, each person, fifty cents; taking depositions, per folio, twenty cents; entering an appeal, twenty-five cents; transmitting papers on appeal to appellate court, twenty-five cents; for performing duties of coroner, same as coroner; trying each case, two dollars; marrying and making returns as required by law, ten dollars; issuing commission to take testimony in any civil case, one dollar.

NOTE.—Act May 1st, 1873.

ARTICLE XIII.

RELATING TO PAYMENT OF FEES.

Sec. 598. *List of fees to be posted in office.*
Sec. 599. *Return of fees on process.*
Sec. 600. *Itemized bill of fees and costs.*
Sec. 601. *Receipt for fees.*

SEC. 598. Each officer in this Territory receiving any fees shall cause a list thereof, specifying each item, and the sum allowed by law for each, to be posted in his office.

SEC. 599. No officer serving any process shall be entitled to any fees for the same, unless he returns on such process the amount of his fees, and the items thereof, and charge for each.

SEC. 600. Any person liable for any costs or fees shall be entitled to receive, on demand, a certified bill of the same, in which the items of service, and the charges therefor, shall be specifically stated.

SEC. 601. Every officer charging fees shall, if required by the person paying the same, give a receipt for the same, setting forth the items, the date of each, and the sum charged therefor.

NOTE.—Act of May 8th, 1873.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS.

Sec. 602. *Mileage of justices of supreme court.*
Sec. 603. *Fees due a county from attached county.*
Sec. 604. *Unclaimed fees to be paid into the county treasury.*
Sec. 605. *Duty of officer paying fees into the treasury.*
Sec. 606. *Duty of treasurer on receipt of same.*
Sec. 607. *Duplicate receipts for same to be filed.*
Sec. 608. *Penalty for violation of four preceding sections.*
Sec. 609. *Term "folio" defined.*
Sec. 610. *Discretionary powers of commissioners in allowing fees.*
Sec. 611. *Void claim of county commissioner.*

SEC. 602. That whenever a court is appointed by the supreme court of the Territory, or the justices thereof, or a majority of them, to be holden in any county of either of the districts of the Territory where causes are not heard which arise under the Constitution and laws of the United States, and in which the justice assigned to said district does not reside, it shall be the duty of the board of county commissioners of such county, in which such term is appointed to be held, to pay to the chief justice, or associate justice, so holding said term, mileage, at the rate of twenty cents per mile, in going from his residence to the place where said court is held, and returning therefrom, as his expenses incurred for, and on account of travel incurred for the benefit of such county, and to cause to be issued to such chief justice, or associate justice, then presiding, a warrant for said amount, to be drawn on the general fund of said county.

SEC. 603. Whenever a term of the district court shall be held in any county in this Territory, and another county is attached to such county for judicial purposes, at the close of each term it shall be the duty of the justice presiding at such term to make an inquiry as to what share of the public expense of such term was incurred for, and on account of the county or counties so attached, or litigants therefrom, and to apportion the same, and to make an order directing the reimbursement to the county incurring such expense, by the county so attached; and it shall be the duty of the board of county commissioners of the attached county to draw their warrants on the treasurer of their county, out of their general fund, payable to the county commissioners of the county incurring said expense, and to forward the same to the treasurer of the county, who shall make report thereof to the board of county commissioners of his county, as soon as the same shall be received; and the said warrants shall be paid in due course as is provided by law; and the said district court is authorized to make any and all necessary orders for carrying this section into effect as equality and justice may require.

NOTE.—Sections 602 and 603 are from Act February 21st, 1879.

SEC. 604. That it shall be, and it is hereby made the duty of the respective clerks of the district courts, probate judges, and justices of the peace, sheriffs, or other officers, to pay into the county treasury of their county all money by them received for witness and jury fees, and remaining unclaimed for three months after the receipt of the same.

SEC. 605. The said clerk, probate judge, or justice of the peace, or sheriff, or other officer, shall, at the time of making such payment, deliver to the treasurer a statement of the case, the names of the witnesses or jurors, and the amount each one is entitled to receive. And such officer so paying said fees into the treasury, shall notify the clerk of the court, probate judge, or magistrate having the custody of any judgment on which the same are paid, in writing, of the payment thereof; and such clerk, probate judge, or magistrate shall endorse the same as paid upon the judgment so in his charge.

SEC. 606. The treasurer of said county shall keep the money thus received separate from the general fund of the county for one year, if not paid out to the person entitled to receive the same before said time, upon the certificate of the district clerk, probate judge, or justice of the peace, sheriff or other officer as the case may be, after which the same shall be credited to the general county fund.

SEC. 607. Any officer paying money into the county treasury under the provisions of sections 604, 605 and 606, shall take a duplicate receipt therefor, one of which he shall file in his office, and the other he shall file with the clerk of the board of county commissioners, who shall charge the amount thereof to the treasurer.

SEC. 608. Any failure to pay over to the county treasurer, witness or jury fees, as contemplated by the four preceding sections, shall subject the offender to a fine for each offence, of not less than one hundred dollars nor more than five hundred dollars, to be collected in any court having jurisdiction, and disposed of as other fines.

NOTE.—Sections 604 to 608, inclusive, are from Act of February 11th, 1876.

SEC. 609. That the term "folio," as used in acts relating to regulation of fees, shall be construed to mean one hundred words, counting two figures as one word, and any portion of a folio, where the whole paper shall contain less than a folio, or where such portion shall be in excess over the last folio shall be deemed a folio.

NOTE.—Act of April 29th, 1873.

SEC. 610. That the county commissioners of the several counties of this Territory, when any bill of costs of any justice of the peace, constable, marshal, sheriff, or other officer of this Territory, or of any county, township, or precinct therein is presented to them for fees in any case of misdemeanor not prosecuted by indictment, for allowance, shall not allow the same, unless in their judgment it appeared at the time such cause was commenced and prosecuted, and said fees incurred to said officers, that the public welfare and the good order and the peace of the Territory would be promoted by such prosecution; nor shall they, in any event of conviction, allow any fee or cost of any officer out of the public funds until they are satisfied that every reasonable effort has been exhausted to collect such fees out of the estate of the defendant, or defendants, convicted.

NOTE—Act of February 13th, 1874.

SEC. 611. No county commissioner, or other auditing officer, shall acquire, in any manner, against any corporate municipality, or against the Territory, any claim, except for official compensation fixed by law, when such claim is one which is to be audited by the board, or body, or office which he holds, or of which he is a member, but in the hands of such person, or his assignee, or partner therein, the same shall be wholly void.

NOTE.—Act of February 13th, 1874.

CHAPTER XXIII.

FENCES.

SEC. 612. A fence shall be considered lawful when constructed of four or more strong poles or rails, the lower pole or rail to be not more than two feet from the ground. The above is intended to apply to what is known as leaning fence; also all board and rail fences, well secured to good and substantial posts firmly set in the ground; also all worm fences and stone walls shall be considered lawful: *Provided*, That all of the above named fences shall not be less than four and one-half feet high; and *provided further*, that any portion of an enclosure bordering on any stream more than four feet deep, swamp, bluff, ditch, or wall, which shall be as difficult for stock to pass as the fence described in this section, may be used as a lawful fence.

NOTE.—Act of January 12th, 1872.

CHAPTER XXIV.

FINANCES.

ARTICLE I.

TERRITORIAL FINANCES AND WARRANTS.

Sec. 613. *Auditor empowered to issue warrants to persons; legislature may direct.*
Sec. 614. *How auditor to pay warrants.*
Sec. 615. *When warrants may be less than five dollars.*
Sec. 616. *Form of warrants.*
Sec. 617. *Warrants to be received for taxes and licenses.*
Sec. 618. *Sheriff and collector not allowed to deal in warrants.*
Sec. 619. *Auditor to make estimate and report to legislature.*
Sec. 620. *Territorial warrants to draw ten per cent. interest.*
Sec. 621. *Auditor prohibited from issuing warrants, except by express provision of law.*
Sec. 622. *Guilty of misdemeanor for violation of foregoing section.*

SEC. 613. That the auditor of the Territory is hereby empowered to issue Territorial warrants, drawn upon the treasury of the Territory, in favor of all persons to whom the legislative assembly of the Territory may direct.

SEC. 614. That the treasurer shall pay out of any funds in his hands applicable to such use, the amount stated as due in the auditor's warrants only, in the order in which they are drawn, according to priority of date: *Provided*, That all warrants are receivable into the treasury in payment of any taxes, licenses, or other dues due the Territory, and all warrants bearing date the same day bear equal priority, and shall be paid in the order in which they are presented for payment.

SEC. 615. The auditor shall issue his warrants on the treasurer in any sum that the party entitled to the same may desire: *Provided*, That they shall not be less than five dollars, unless the sum due is less than that amount.

SEC. 616. The form of the warrants of the auditor, drawn on the treasurer for the payment of money, shall be as follows:

Warrant No. ——. TERRITORY OF MONTANA,
County of———
——————. 18—.

The treasurer will pay to—— ——————————, or order, ————— $\frac{}{100}$ dollars, out of any money in the treasury not otherwise appropriated.

——————————,
$———
Territorial Auditor.
Presented for payment, ——————, 18—.
——————————,
Territorial Treasurer.

SEC. 617. From and after the passage of this article, one-fourth of all taxes and licenses due this Territory, or any county thereof, may be paid in warrants, and three-fourths (the balance) shall be paid in money.

SEC. 618. No sheriff or collector of the revenue shall buy, purchase, trade for, or in any manner deal in warrants drawn by the auditor, except at their par value; and for every offence committed against the provisions of this article, shall be fined in any sum not exceeding five hundred dollars.

SEC. 619. That each year the auditor shall make an estimate of the probable amount of revenue derivable from the various sources, and report the same to the legislative assembly of the Territory, by which they may be governed in their appropriations, and that every warrant shall be cancelled or paid in its own fiscal year out of the sums in the hands of the treasurer, and that no warrants shall be issued over and above the estimate of said auditor, duly reported to the legislative assembly.

SEC. 620. That all Territorial warrants issued by the proper authorities of the Territory shall draw interest at the rate of ten per cent. per annum, from and after the date of their presentation, until there are funds to pay said warrants in the hands of the treasurer.

SEC. 621. The Territorial auditor of this Territory is hereby forbidden to issue any warrant in favor of any person, drawing upon the Territorial treasury for any sum, unless he is authorized by law expressly,in which the name of the party shall be specified, the nature of the service performed, and the amount specified for the performance of such service.

SEC. 622. That in case the Territorial auditor shall issue any warrant, in favor of any person, contrary to the provisions of the preceding section of this article, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, in any court of competent jurisdiction in this Territory, shall be fined in a sum not less than one thousand dollars, nor more than five thousand dollars, to be collected as in other cases provided by law, and shall forfeit all rights to hold or enjoy office in this Territory.

NOTE.—Act of January 12th, 1872.

ARTICLE II.

DUPLICATE BONDS AND WARRANTS.

Sec. 623. *The word "original" to be written on face of original bond or warrant.*
Sec. 624. *Duplicate bond or warrant may be issued.*
Sec. 625. *Security to be given on the issue of a duplicate.*
Sec. 626. *The word "duplicate" to be written on duplicate bond or warrant.*
Sec. 627. *The words "original" or "duplicate" impart notice.*
Sec. 628. *On production of original bond, security to be assigned to holder thereof.*
Sec. 629. *When duplicate to be issued.*

SEC. 623. It shall be the duty of the Territorial auditor, at the time of issuing any original warrant or bond, to cause to be written or printed upon, or across the face of such bond or warrant, the word "original," with red ink, in a conspicuous manner.

SEC. 624. The Territorial auditor is hereby authorized and empowered, upon satisfactory proof that any original Territorial bond, warrant, or coupon has been lost or destroyed, to issue to the owner or holder of such bond, warrant, or coupon, a duplicate thereof, which shall take the place in order of registration and payment of such original bond, warrant, or coupon, and shall in all cases supersede and take the place of such original.

SEC. 625. Before issuing such duplicate bond, warrant, or coupon, the auditor shall require the person or persons demanding the same, to execute and deliver to him a bond to the Territory of Montana, payable to whomsoever it may concern, in at least double the amount of the duplicate bond, warrant, or coupon, with at least two good and sufficient sureties, who shall be required to justify as in cases of attachment, the condition of such bond being that the principal and sureties therein will indemnify and save harmless the Territory of Montana from all loss, cost, or damage, by reason of the issuing of such duplicate, and will pay to any person entitled to receive the same, as the lawful holder of the original bond, warrant, or coupon, all moneys received upon such duplicate.

SEC. 626. The auditor, at the time of issuing any duplicate bond, warrant, or coupon, shall write upon or across the face thereof, the word "duplicate," with red ink, in a conspicuous and legible manner.

SEC. 627. The word "original" or "duplicate," upon any bond, warrant, or coupon, as provided in section 623 of this article, shall impart notice to all persons that the same is issued and payable, subject to the provisions of this article.

SEC. 628. It shall be the duty of the Territorial auditor, upon production to him of any original bond, warrant, or coupon, by the lawful holder or owner thereof, to assign by endorsement, and deliver to him the bond mentioned in section 625 of this article, and such owner or holder may maintain an action in his own name, upon such bond, for the recovery of any moneys paid upon such duplicate.

SEC. 629. In case any Territorial bond, warrant, or coupon, issued prior to the passage of this act, shall be lost or mislaid, it shall be the duty of the auditor, upon satisfactory proof thereof, and the execution and delivery of a bond in the manner and conditioned as provided in section 625 of this article, to issue a duplicate thereof, which duplicate shall take the place in order of registration and payment, of such lost or mislaid bond, warrant, or coupon, and the provisions of this article shall apply thereto.

NOTE.—Act of Janary 6th, 1872.

ARTICLE III.

COUNTY FINANCES, BONDS AND WARRANTS.

Sec. 630.	*County commissioners may bond indebtedness.*
Sec. 631.	*May set apart revenue to pay bonds.*
Sec. 632.	*Size of bonds.*
Sec. 633.	*Duty of treasurer in taking up warrants.*
Sec. 634.	*When bonds redeemable.*
Sec. 635.	*County treasurers to enter county warrants presented for payment.*
Sec. 636.	*Treasurers, when to pay over to Territory, to take duplicate receipts.*
Sec. 637.	*County treasurer to post on door of office list of warrants.*
Sec. 638.	*County warrants presented to treasurer for payment.*

SEC. 630. That the county commissioners of the different counties of this Territory shall have, in addition to the powers already conferred by law, authority to call in, at any time when they shall deem it expedient for the interest of their respective counties, all outstanding orders against the treasury of the county, and may issue bonds, with interest-bearing coupons, payable semi-annually, in lieu thereof.

SEC. 631. The county commissioners of the different counties may set apart from the ordinary revenue of their respective counties, for the payment of outstanding bonds and the interest thereon, a certain amount annually: *Provided,* That the sum annually set aside shall not exceed one-fourth of the outstanding bonds, exclusive of interest: *And provided, also,* That the amount so set aside shall not at any time exceed one-fifth of the revenue of the county.

SEC. 632. All bonds issued under the provisions of this article shall be for sums not less than fifty dollars. They shall be signed, countersigned, and issued in the same manner provided for the issuing of county warrants.

SEC. 633. It shall be the duty of the county treasurer, upon taking up county orders for the purposes in this article mentioned, to keep a record of the same, to cancel said orders, and to make a report thereof to the board of commissioners at each regular meeting of said board.

SEC. 634. The bonds authorized to be issued by this article shall be redeemable at the pleasure of the county any time after three years, and payable within seven years from the date of their issue.

SEC. 635. It shall be the duty of the several county treasurers within the territory to keep a book in which they shall enter all county warrants of their proper county presented for payment, in the order in which they are presented, giving the name of the owner, the number and amount of the warrants; and they shall be paid in the order in which they are presented.

SEC. 636. The treasurers of the several counties of this Territory shall pay over to the Territorial treasurer every three months all moneys that they have in their hands belonging to the Territory.

SEC. 637. The county treasurer, at the time of paying over any money to the Territorial treasurer, shall take from him duplicate receipts therefor, one of which he shall deposit with the Territorial auditor, and retain the other as his voucher on settlement. The county treasurers of the several counties of this Territory shall, on the first Monday of every month, post upon the door of their offices a list of all warrants that they have funds in their hands to redeem or pay, the payment for which has not been demanded during the month last passed, and, from the date of such notice, the interest on all warrants thus posted shall cease; and it shall be the duty of such treasurer to file a true copy of said notice in the office of the county clerk of his county, which clerk shall file and preserve the same in his office, which notice, or a duly authenticated copy thereof, shall be *prima facie* evidence of such posting: *Provided, however,* That in all cases where county warrants have been posted or advertised, as in this section directed, and not presented for payment within two months from the date of such notice, shall be passed over, and the money in the treasury be paid upon the next warrants in turn according to their number and registration as the law directs, but that such warrants, so passed, shall at any time thereafter take preference for payment upon presentation to such treasurer.

SEC. 638. That all county warrants heretofore drawn, or that may hereafter be drawn, by the proper authorities of any county, shall, after having been presented to the county treasurers of the respective counties of this Territory, and by them endorsed, not paid for want of funds in the treasury, from and after said date of presentation and endorsement, shall draw interest at the rate of ten per cent. per annum.

NOTE.—Act January 12th, 1872.

CHAPTER XXV.

FIRE WARDEN.

Sec. 639. *Appointment of and duties of fire warden.*
Sec. 640. *Dangerous chimneys, etc., to be removed, etc.; penalty for violating.*

SEC. 639. That the county commissioners of every county in this Territory shall, upon petition from ten residents of any unincorporated city, town, or village in their respective counties, appoint a fire warden for said city, town or village, as the case may be, whose duty it shall be to examine all chimneys, stoves, stove-pipes, ovens, furnaces, boilers, and appurtenances thereto belonging.

SEC. 640. When any chimney, stove, stove-pipe, oven, furnace, boiler or appurtenance thereto belonging are defective, out of repair, or so placed in any building as to endanger it, or any other building by communicating fire thereto, the fire warden, on complaint of any citizen either orally or in writing, on examination or other satisfactory proof, shall give written notice to the owner or occupant of such building or premises, and if he neglects for the space of three days to remove or repair the same effectually, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than one hundred dollars.

All fines collected under the provisions of this chapter shall be paid into the county treasury for the use and benefit of the school district in which the person fined shall reside, and it shall be the duty of the court imposing said fine to certify to the county treasurer the school district in which the person fined shall reside.

NOTE.—Act of February 2d, 1876.

CHAPTER XXVI.

GAME.

ARTICLE I.

PROTECTION OF GAME, FUR-BEARING ANIMALS AND FISH.

Sec. 641. *Penalty for killing large game between February 1st and August 10th.*
Sec. 642. *Penalty for killing for the hide only.*
Sec. 643. *Unlawful to kill certain fur-bearing animals between April 1st and October 1st, or within an enclosure.*
Sec. 644. *Penalty for killing certain birds between March 1st and August 1st, or for sale, or chasing large game with dogs.*
Sec. 645. *Penalty for killing geese and ducks between May 15th and August 10th.*
Sec. 646. *Penalty for killing small singing birds for four years after May 1st, 1876.*
Sec. 647. *Possession of dead bodies, prima facie evidence of killing.*
Sec. 648. *Fishing tackle; where seine may be used.*
Sec. 649. *No poisonous bait.*
Sec. 650. *Dams, fish-traps, drugs, poisons and giant powder prohibited.*
Sec. 651. *Penalties.*
Sec. 652. *Transportation of fish unlawfully caught prohibited.*
Sec. 653. *Fines; how collected and applied.*
Sec. 654. *Special duties of grand juries and courts.*

SEC. 641. That any person or persons who shall willfully shoot or otherwise kill or cause to be killed any buffalo, moose, elk, black-tailed deer, white-tailed deer, mountain sheep, Rocky mountain goat, or antelope, between the first day of February and the tenth day of August, of each year, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars, nor more than two hundred and fifty dollars for each offence committed.

SEC. 642. That any person or persons who shall willfully shoot or otherwise kill or cause to be killed at any time, any of the animals mentioned in section 641 of this article, for the purpose of procuring the hide only and shall not make any use of the carcass thereof, for food for himself or themselves, or for the purpose of selling the same to others for food, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars, nor more than two hundred and fifty dollars for each offence committed.

SEC. 643. That any person or persons who shall trap, shoot, or otherwise kill or cause to be killed any beaver, otter, martin, or fisher, between the first day of April, and the first day of October, of each year, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars, nor more than two hundred and fifty dollars for each offence committed, and any person who shall, at any time trap, shoot, or otherwise kill any beaver in any field, or in any other enclosure in this Territory, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to the penalties above mentioned in this section; that nothing contained in this section shall prevent owners of land from catching or killing beaver on their own lands.

SEC. 644. That any person or persons who shall willfully shoot or otherwise kill, or cause to be killed, any grouse, prairie-chicken, pheasant, fool-hen, partridge, or quail, between the first day of March and the first day of August, of each year, or shall hunt, or chase with dogs any elk, deer, antelope, or mountain sheep, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars, nor more than two hundred and fifty dollars, for each offence committed; and all persons are hereby prohibited, at all times, from killing any of the birds described in this section for speculative purposes, or for market or for sale, and any person or persons who shall hereafter kill any of the character of birds in this section hereinbefore mentioned, for speculative purposes, for market or for sale, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than one hundred dollars.

NOTE.—Act of February 15th, 1877.

SEC. 645. That any person or persons who shall willfully shoot, or otherwise kill or cause to be killed, any of the varieties of wild geese or ducks, which at any season of the year are to be found within the Territory, between the 15th day of May and the 10th day of August, of each year, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars nor more than two hundred and fifty dollars for each offence committed.

SEC. 646. That for the next four years from May 1st, A. D. 1876, it shall be unlawful for any person or persons to willfully kill or cause to be killed, or destroyed in any manner whatever, any robin, meadow-lark, thrush, goldfinch, flicker, or yellow-hammer, black-bird, oriole, snow-bird, or any other of the small birds commonly known as singing birds, within this Territory, and upon conviction thereof, any person or persons so convicted shall be fined in any sum not less than five dollars nor more than twenty-five dollars for each offence committed.

SEC. 647. That the possession of the dead bodies, or any part thereof, of any animals or birds mentioned in this article, by any person or persons, shall be taken as *prima facie* evidence that such person or persons are guilty of killing the same.

SEC. 648. That a fishing-tackle, consisting of a rod or pole, line, and hook, or spear, shall be the only lawful way that fish can be taken in any of the streams of this Territory. It shall, however, be lawful to use a seine in the Missouri and Jefferson rivers, and in the Beaverhead up to Beaverhead rock, and in North Boulder creek twenty-five miles above its mouth.

NOTE.—Act of February 15th, 1877.

SEC. 649. That said hook shall not be baited with any drug or substance poisonous to any kind of fish.

SEC. 650. That it shall be unlawful for any person in the Territory of Montana to make any dams or use any fish-traps or any similar means of catching fish, or to use any drug, poison, or giant-powder, or explosive compound intending to catch, kill or destroy any species of fish.

SEC. 651. Any person or persons, company or corporations offending against sections 648, 649 and 650 of this article, or either of them, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars, nor more than two hundred and fifty dollars for each offence committed.

SEC. 652. Any person or persons, stage or express company, or association of persons, who shall receive for transportation or carriage, or shall sell or offer for sale, fish that have been caught, taken or killed contrary to the provisions of this article, knowing, or having reason to believe, that such fish were so illegally caught, taken or killed, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars, nor more than two hundred and fifty dollars for each lot or shipment of fish so transported or carried.

SEC. 653. That all fines mentioned in any section of this article, shall be recovered, with costs of suit, in civil actions, in the name of the Territory of Montana, before any court having competent jurisdiction. One-half of all fines so collected shall be paid into the county treasury of the county in which the offence was committed, for the benefit of the common schools of such county, and one-half shall be paid to the person or persons making complaint of the commission of such offence. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may, by order of the court, be confined in the county jail until such fines and costs are paid.

SEC. 654. That it shall be the duty of the grand jury to diligently seek out and investigate all infractions of any provision or provisions of this article (except such cases and infractions as may have been already tried before some court having competent jurisdiction) and upon due proof of the infraction of any of the said provisions they shall proceed to indict such party or parties according to law, and it is hereby made the duty of the court to call the attention of the grand jury to the provisions of this article. And the district court shall have concurrent jurisdiction with the probate court of all offences committed under the provisions of this article.

NOTE—The sections of the preceding article, except where otherwise specially noted, are from Act of February 5th, 1876.

ARTICLE II.

QUAIL.

Sec. 655. Penalty for killing quail for six years.
Sec. 656. Dead bodies prima facie evidence.

Sec. 655. For the next six years after the passage of this article, it shall be unlawful for any person or persons to willfully kill, or destroy, or cause to be killed or destroyed, in any manner whatever, any quail which are, or may hereafter be brought, or raised in this Territory, and upon conviction thereof, any person or persons so convicted shall be fined in any sum not less than five dollars, nor more than twenty-five dollars, for each offence committed.

Sec. 656. That the possession of the dead bodies, or any part thereof, of the birds mentioned in this article, by any person or persons, shall be taken as *prima facie* evidence that such person or persons are guilty of killing the same.

Note.—Act of February 21st, 1879.

BISON OR BUFFALO.

[*See Sec. 211 Criminal Laws.*]

ARTICLE III.

BOUNTY FOR KILLING CERTAIN ANIMALS.

Sec. 657. County commissioners may offer a bounty; manner of procuring bounty.
Sec. 658. County commissioners to order a warrant on treasurer.
Sec. 659. Not to apply to the counties of Choteau and Custer.

Sec. 657. From and after the passage of this article, the county commissioners may, when they deem it advisable for the best interest of their respective counties, offer a bounty, to be paid as hereinafter provided: The sum of five dollars for each bear, and three dollars for each mountain lion or panther slain or killed in said county: *Provided,* That any person killing, or causing to have been killed, any one of the above named animals, shall, within thirty days from date of killing said animal or animals, exhibit the entire scalp or scalps, consisting of the skin from the forehead, embracing the ears of each animal, to any probate judge or acting justice of the peace within the county in which the said animal or animals were killed, and shall file his affidavit with the said officer, setting forth that the animal or animals from which the scalps were taken was killed within the bounds of the county in which the application for bounty is claimed. The said probate judge or justice of the peace, as the case may be, shall examine minutely each scalp presented, in order to prevent fraud or counterfeit; and should said officer, after careful examination, find the said scalp or scalps to be genuine, he shall mark each scalp by punching a hole one-half an inch in diameter in each ear, and furnish the party presenting the said scalp or scalps with a certificate of the number, and species, of the animals from which they were taken; and he shall receive for his services from the party receiving the certificate, the sum of fifty cents for each bear scalp, and the sum of twenty-five cents for each mountain lion or panther scalp.

SEC. 658. It shall be the duty of the board of county commissioners to take up all certificates presented, that have been issued under the provisions of section 657 of this article, and shall give the person presenting the certificate an order on the county treasurer for the amount as specified in section 657 of this article. The party presenting the certificate shall receipt upon the back of the certificate the full amount for which the order was given.

SEC. 659. The counties of Choteau and Custer are excepted from the operation of this article.

NOTE.—Act of February 19th, 1879.

CHAPTER XXVII.

HABEAS CORPUS.

Sec. 660. *Every person restrained of his liberty may prosecute writ of habeas corpus.*
Sec. 661. *Application to be made by petition, verified.*
Sec. 662. *Writ may be granted at any time by judge of district or supreme court.*
Sec. 663. *Judge shall grant writ without delay.*
Sec. 664. *To whom directed and what to state.*
Sec. 665. *Writ to be delivered by clerk without delay.*
Sec. 666. *When to be delivered to sheriff.*
Sec. 667. *How writ served, when person not found.*
Sec. 668. *Person disobeying writ to be attached.*
Sec. 669. *What party must state in return to writ under oath.*
Sec. 670. *When party must bring body of person in his custody.*
Sec. 671. *When person sick, need not be brought.*
Sec. 672. *Judge may hear and decide on return; when.*
Sec. 673. *Judge to proceed immediately when writ returned.*
Sec. 674. *What party may deny and allege on hearing.*
Sec. 675. *Judge to hear and decide cases in a summary manner.*
Sec. 676. *Judge empowered to compel witnesses' attendance.*
Sec. 677. *If no legal cause for restraint appear, party to be discharged.*
Sec. 678. *If party legally detained, to be remanded.*
Sec. 679. *If party in custody on legal process, in what cases to be discharged.*
Sec. 680. *When not to be discharged for defect of form in commitment.*
Sec. 681. *If charge to be defectively set forth in commitment, judge may summon witnesses and investigate the charge.*
Sec. 682. *Person entitled to writ to give bail.*
Sec. 683. *If person entitled to bail, judge to take same.*
Sec. 684. *If person not entitled to discharge or bail, to be remanded.*

Sec. 685. *Judge may order party committed to custody of person entitled thereto.*
Sec. 686. *Judge to commit person to proper custody until case determined.*
Sec. 687. *Writ not to be disobeyed for defect of form.*
Sec. 688. *When person discharged, may be again imprisoned for same cause.*
Sec. 689. *In what cases judge may issue warrant to have party brought forthwith.*
Sec. 690. *May order person detaining prisoner arrested.*
Sec. 691. *How officer to execute warrant.*
Sec. 692. *Return to warrant same as to writ, may be made and trial had.*
Sec. 693. *Such person may be discharged or returned to custody.*
Sec. 694. *All processes and writs to be issued by clerk.*
Sec. 695. *Penalty for refusing to grant or obey writ.*
Sec. 696. *Penalty for removing or concealing prisoner.*
Sec. 697. *Any person assisting guilty of misdemeanor.*
Sec. 698. *Persons convicted under preceding section to be imprisoned.*

SEC. 660. That every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretence whatever, may prosecute a writ of *habeas corpus*, to inquire into the cause of such imprisonment.

SEC. 661. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his or her behalf, and shall specify:

First. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he or she is confined or restrained, and the place where, naming all the parties, if they are known, or describing them if they are [not] known.

Second. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

Third. The petition must be verified by oath or affirmation of the party making application.

SEC. 662. Such writ of *habeas corpus* may be granted by any judge of the supreme court or district courts at any time, in term or vacation.

SEC. 663. Any judge empowered to grant a writ applied for under this chapter, if it appear that the writ ought to issue, shall grant the same without delay.

SEC. 664. Such writ shall be directed to the officer or party having such prisoner in custody or under restraint, commanding him or them (as the case may be) to have the body of such person so imprisoned or detained, as is alleged by the petition, before the judge shall direct, specifying in such writ the place where the petition will be heard, to do and receive what shall then and there be considered concerning such person, together with the time and cause of his or her detention, and have then and there such writ.

SEC. 665. If such writ be directed to the sheriff or other ministerial officer, it shall be delivered by the clerk of the court prescribed by the judge issuing said writ to such officer without delay.

SEC. 666. If such writ be directed to any person other than is specified in the last preceding section, the same shall be delivered to the sheriff or his deputy, and shall be by him served upon such person, by delivering the same to him without delay.

SEC. 667. If the officer or person to whom such writ is directed can not be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered by leaving such writ at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside of his dwelling-house, or the place where the party is confined or under restraint. The service of said writ is made by serving a copy and exhibiting the original, and where the posting is required by posting a copy.

SEC. 668. If the officer or person to whom such writ is directed shall refuse, after due service as aforesaid, to obey the same, it shall be the duty of the judge, upon affidavit, to issue an attachment against such person, directed to the sheriff, or if the sheriff be defendant, to an elisor appointed for that purpose by the judge, commanding forthwith to apprehend such person and bring him immediately before such judge, and upon being so brought, he shall be committed to the common jail of the county until he make due return of such writ, or be otherwise legally discharged.

SEC. 669. The party upon whom such writ shall be duly served shall state in his return plainly and unequivocally:

First. Whether he have or not the party in his custody or under his power or restraint.

Second. If he have the party in his custody or power or under his restraint, he shall also state the authority and cause of such imprisonment or restraint, setting forth the same at large.

Third. If the party be detained by virtue of any writ, warrant or any other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the judge on the hearing of such return.

Fourth. If the officer or person on whom such writ shall have been served shall have had the party in custody or under his restraint, at any time prior or subsequent to the date of the writ of *habeas corpus*, but such officer or person has transferred such custody or restraint to another, the return shall state particularly, to whom, at what time and place, for what cause and by what authority, such transfer took place.

Fifth. The return must be signed by the person making the same, and, except when such person shall be a sworn officer, and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

SEC. 670. If the writ of *habeas corpus* be served, the person or officer to whom the same is directed shall also bring the body of the party in his custody or restraint, according to the command of the writ, except in the case specified in the next two sections.

SEC. 671. Whenever, from sickness or infirmity of the person directed to be produced by any writ of *habeas corpus*, such person can not, without danger, be brought before the judge, the officer or person in whose custody or power he or she is may state that fact in his return to the writ, verifying the same by affidavit.

SEC. 672. If the judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, such judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

SEC. 673. The judge before whom a writ of *habeas corpus* shall be returned shall immediately thereafter proceed to hear and examine the return, and such other matter as may be properly submitted to his hearing and consideration.

SEC. 674. The party brought before the judge on the return of the writ may deny or controvert any material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his or her imprisonment or detention is unlawful, or that he or she is entitled to his or her discharge.

SEC. 675. Such judge shall thereupon proceed in a summary manner to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the law and the justice of the case may require.

SEC. 676. Such judge shall have full power and authority to require and compel the attendance of witnesses by process or subpœna and attachment, and do and perform all other acts and things necessary to a full and fair hearing and determination of the cause.

SEC. 677. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such judge shall discharge such party from the custody or restraint under which he or she is held.

SEC. 678. It shall be the duty of such judge, if the time during which such party may be legally detained in custody has not expired, to remand such party if it shall appear that he is detained in custody by virtue of the final judgment or decree of any competent court of criminal jurisdiction, or upon any process issued upon such judgment or decree, or in cases of contempt of court.

SEC. 679. If it appear upon the return of the writ of *habeas corpus*, that the prisoner is in custody by virtue of the process from any court in the Territory, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last preceding section:

First. When the jurisdiction of such court or officer has been exceeded.

Second. When the imprisonment was at first lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.

Third. When the process is defective in some matter of substance required by law, rendering such process void.

Fourth. When the process, though proper in form, has been in a case not allowed by law.

Fifth. When the person having the custody of the prisoner is not the person allowed by law to detain him.

Sixth. Where the imprisonment is not authorized by any judgment, order, or decree of any court, nor by any provision of law.

Seventh. Where a party is committed on a criminal charge, without reasonable or probable cause.

Sec. 680. If any person be committed to prison, or he be in custody of any officer, on any criminal charge, by virtue of any warrant or commitment of a justice of the peace, such person shall not be discharged from such imprisonment or custody on the ground of any defect of form in such warrant or commitment.

Sec. 681. If it shall appear to the judge by affidavit, or upon the hearing of the matter, or otherwise upon the implication of the process or warrant of commitment, and such other papers in the proceedings as may be shown to such judge, that the party is guilty of criminal offence, or ought to be discharged, such judge, although the charge be defectively or insubstantially set forth in such process or warrant of commitment, shall cause the complainant or other necessary witnesses to be subpœnaed to attend at such time as shall be ordered, to testify before such judge; and upon the examination he shall discharge such prisoner, or let him or her to bail, if the offence be bailable, or recommit him or her to custody, as may be just and legal.

Sec. 682. Whenever any person may be imprisoned or detained in custody on any criminal charge for want of bail, such person shall be entitled to a writ of *habeas corpus*, for the purpose of giving bail upon averring that fact in his petition, without alleging that he or she is illegally confined.

Sec. 683. Any judge before whom any person who has been committed on a criminal charge shall be brought on a writ of *habeas corpus*, if the same be bailable, may take a recognizance from such person, as in other cases, and shall file the same in the proper court without delay.

Sec. 684. If any person brought before the judge on return of the writ be not entitled to his or her discharge, and be not bailed, where such bail is allowable, such judge shall remand him or her to custody, or place him or her under restraint from which he or she was taken, if the person, under whose custody or restraint he or she was, be legally entitled thereto.

Sec. 685. In cases where any party is held under legal restraint or custody, or any other person is entitled to the restraint or custody of such party, such judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

Sec. 686. Until judgment be given on the return, the judge before whom any party may be brought on such writ, may commit him or her to the custody of the sheriff of the county, or place him or her in such care or under such custody as his or her age or circumstances may require.

Sec. 687. No writ of *habeas corpus* shall be disobeyed for defect of form if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him or her, and the judge before whom he or she is brought.

Sec. 688. No person who has been discharged by the order of the judge upon a writ of *habeas corpus*, issued pursuant to the provisions of this chapter, shall be again imprisoned, restrained, or kept in custody, for the same cause, except in the following cases:

First. If he or she shall have been discharged from custody, on a criminal charge, and be afterwards committed for the same offence by legal order or process.

Second. If after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner may be again arrested, on sufficient proof, and committed by legal process for the same offence.

SEC. 689. Whenever it shall appear by satisfactory proof, by affidavit, to any judge authorized by law to grant a writ of *habeas corpus*, that any one is illegally held in custody, confinement, or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of *habeas corpus* can be enforced, said judge may cause a warrant to be issued reciting the facts, and directed to the sheriff, or any constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and bring him or them forthwith before such judge to be dealt with according to law.

SEC. 690. Such judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

SEC. 691. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons therein named before the judge who may have directed the issuing of such warrant.

SEC. 692. The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in case of a writ of *habeas corpus*, and the same may be denied, and like allegations, proofs, and trial be had thereon as upon the return to a writ of *habeas corpus*.

SEC. 693. If such party be held under illegal restraint or custody, he or she shall be discharged, and if not, he or she shall be restored to the custody of the person entitled thereto, or left at liberty, as the case may require.

SEC. 694. All writs, warrants, processes, and subpœnas, authorized by the provisions of this chapter, shall be issued by the clerk of the court, and (except subpœnas) sealed with the seal of the court, and shall be served and returned forthwith, unless the judge shall specify a particular time for any such return.

SEC. 695. If any judge, after a proper application is made, shall refuse to grant an order for a writ of *habeas corpus*, or if the officer or person to whom such writ is directed shall refuse obedience to the command thereof, he or they shall forfeit and pay to the person aggrieved, a sum not exceeding five thousand dollars, to be recovered by an action of debt in any court having cognizance thereof.

SEC. 696. Any person having in his custody, or under his restraint or power, any person for whose relief a writ of *habeas corpus* shall have been duly issued, pursuant to the provisions of this chapter, who, with the intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or exchange the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such judge, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding five thousand dollars, nor less than one thousand dollars.

SEC. 697. Every person who shall knowingly aid or assist in the commission of any offence specified in the last preceding section, shall be deemed guilty of a misdemeanor, and punished as in the last preceding section.

SEC. 698. Every person convicted of any offence under the provisions of the last preceding section, in addition to the punishment therein mentioned, may also be imprisoned in the county jail for a term not exceeding one year.

NOTE.—Act January 12th, 1872.

CHAPTER XXVIII.

IMPRISONMENT FOR DEBT.

SEC. 699. There shall be no imprisonment for debt in this Territory; and all laws or parts of acts conflicting herewith are hereby repealed.

CHAPTER XXIX.

INFANTS AND LAWFUL AGE.

SEC. 700. That all male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be, to all intents and purposes, held and considered to be of lawful age.

CHAPTER XXX.

INSANE.

ARTICLE I.

COMMISSIONERS OF THE INSANE—TRIAL OF SANITY.

Sec. 701. *Three commissioners to be elected by the legislature, to have direction over insane.*
Sec. 702. *Commissioners to hold office for two years.*
Sec. 703. *Commissioners to take oath and give bond.*
Sec. 704. *Commissioners to meet and organize.*
Sec. 705. *Secretary to preserve proceedings of boards; contracts; how executed.*
Sec. 706. *Commissioners to prescribe rules for the custody of insane and to advertise for sealed proposals.*
Sec. 707. *Commissioners to contract with lowest bidder for care and maintenance of insane.*
Sec. 708. *One of Commissioners to visit and inspect insane once in three months.*

Sec. 709. *Commissioners to certify amount due for maintenance of insane to auditor.*
Sec. 710. *Contractor to provide a suitable building for insane.*
Sec. 711. *Probate judge or county commissioners to have insane person brought before him, to summon jury; proceedings thereon.*
Sec. 712. *Commissioners may annul contract and re-let it.*
Sec. 713. *District attorney to sue for and collect amount expended for maintenance, etc., of lunatic.*
Sec. 714. *Pay and allowance of commissioners.*
Sec. 715. *Commissioners to certify amount to auditor.*
Sec. 716. *Fees of probate judge or county commissioners for examination.*
Sec. 717. *Fees of sheriff for services.*
Sec. 718. *Commissioners to report to legislature; governor to fill vacancy.*
Sec. 719. *Appropriation to carry this act into effect.*

Sec. 701. There shall be elected during the present session of the legislative assembly of the Territory of Montana, and bienially at each regular session thereof, by the legislative assembly, in joint convention assembled, one commissioner from each of the judicial districts, as the same are or may be established by law in this Territory, who shall constitute the board of commissioners for the insane of Montana Territory, and who shall exercise the powers and perform the duties hereinafter mentioned.

Sec. 702. Said commissioners shall hold their offices respectively for the term of two years, and until their successors shall be elected and qualified.

Sec. 703. It shall be the duty of the secretary of the legislative council, immediately, to notify the persons who may be elected under the provisions of this article, of their election, by transmitting to each of them, by the most speedy and reliable means, a copy of the proceedings of such joint convention relating to said election; and the person so elected shall, within ten days after such election, take and subscribe to the following oath: I, A B, do solemnly swear that I will truly and faithfully discharge the duties of a member of the board of commissioners for the insane of Montana Territory; that I will carefully guard against any and all improper expenditures of money in all transactions connected with said board; and that I am not now, and will not be during the continuance of my official term, directly or indirectly interested in any bid or contract made by said board. Who shall give a joint bond in good and sufficient security for the faithful performance of their duty, in the sum of twenty thousand dollars, which oath and bond shall be filed with the secretary of the Territory.

Sec. 704. It shall be the duty of the board of commissioners aforesaid, as soon as practicable after taking the oath aforesaid, and within forty days after their election, to meet at any place within the judicial districts they may agree upon, and shall organize by electing one of their number as president, and one of them as secretary, of said board.

Sec. 705. The secretary shall keep and preserve written minutes of all proceedings of said board, and shall deliver the same to his successor, and each one of said commissioners shall have one vote in determining any question or transacting any business by said board, and all contracts of said board shall be executed in the name of the Territory of Montana, by the president and secretary of such board.

SEC. 706. The said commissioners shall have the power to prescribe all necessary rules for the proper custody, maintenance, and treatment of all persons adjudged insane, as hereinafter provided, within this Territory; and it shall be their duty to publish the same, inviting sealed proposals, within a period of thirty days thereafter, for the custody, maintenance, and treatment of such insane persons in accordance with such rules; which publication shall be made in some newspaper published in each one of said districts in which a newspaper shall be published, and the first number of which newspaper containing such publication shall be published at least thirty days before any contract shall be made by said commissioners by virtue of this article. All proposals tendered in pursuance of said publication shall be accompanied by a bond in the sum of twenty-five thousand dollars, with sufficient sureties, to be approved by the president of said board, conditioned for the faithful performance of the terms of the contract in case such proposal shall be accepted.

SEC. 707. Said commissioners shall canvass all prosposals received in accordance with said publication, and they are hereby authorized and empowered to contract on behalf and in the name of the Territory of Montana, with the lowest and best bidder, for the care, custody, and maintenance of such insane persons in accordance with the requirements published as aforesaid; but said commissioners shall have and reserve the power to reject any and all of such proposals; and such contracts shall require the person or persons entering into the same to receive all persons adjudged insane and delivered to him or them, as hereinafter provided; and to keep, maintain, and treat them in accordance with the requirements of said commissioners; and shall specify the compensation agreed upon for each of such insane persons.

SEC. 708. Said commissioners shall, at all times, have free access to said insane persons, and it is hereby made their duty to elect one of their board, whose duty it shall be to visit and inspect the condition of all insane persons provided for by this article, at least once in three months.

SEC. 709. The said commissioners shall, upon the application of the person or persons having the custody of said insane persons, under such contract, at the end of each quarter, certify to the Territorial auditor the amount due to such person therefor; and it shall be the duty of such auditor to draw his warrant upon the Territorial treasurer for such amount payable out of the moneys hereinafter appropriated.

SEC. 710. The said contract shall require the person or persons entering into the same to provide and keep a secure and suitable building for the safe and proper keeping of such insane persons in the manner prescribed by said commissioners; and such person shall immediately transmit and cause to be filed in the office of the probate judge in each county in the Territory a notification of the place at which insane persons from such county shall be delivered for safe keeping and treatment under the provisions hereof.

Sec. 711. From and after the passage of this article, it shall be the duty of the probate judge, or, in his absence or inability to act, the chairman of the boards of the county commissioners of the several counties of this Territory, upon the application of any person under oath, setting forth that any person, by reason of insanity, is unsafe to be at large, or is suffering under mental derangement, to cause the said person to be brought before him at such time and place as he may direct, and the said judge or commissioner shall also cause to appear, at the same time and place, a jury of three citizens of his county, one of whom shall be a licensed practicing physician, who shall proceed to examine the person alleged to be insane, and if such jury, after careful examination, shall certify, upon oath, that the charge is correct, and the said probate judge or commissioner is satisfied that such person, by reason of insanity, is unsafe to be at large, or is incompetent to provide for his or her own proper care and support, and has no property applicable to such purpose, and has no kindred in the degree of husband or wife, father or mother, children, or brother or sister, living within this Territory, of sufficient means and ability to provide for such care and maintenance, or if he or she have such kindred within the Territory, and such kindred fail or refuse to properly care for and maintain such insane person, such judge or county commissioner shall make out duplicate warrants, reciting such facts, and place them in the hands of the sheriff of said county, who shall immediately, in compliance therewith, convey the person or persons therein named, and deliver him, her or them, to the contractor aforesaid, at the place designated in the notification herein required, and such contractor shall acknowledge, by endorsement in writing, upon the back of each of said warrants, the delivery of such persons described therein to him, and the date thereof; and such sheriff shall return one of said warrants to the officer issuing the same, and forward the other to the secretary of the board of commissioners aforesaid, who shall file and preserve the same.

Sec. 712. In case such contractor shall fail to perform his agreement, said commissioners may declare said contract annulled, and may proceed to re-advertise and re-let the same, in the meantime provide for the custody and care of such insane persons as may be under the care of such contractor, and such contractor and his sureties shall be liable for all damages sustained by reason of such failure.

Sec. 713. The district attorneys of the several districts of this Territory shall, at the request of the said board of commissioners, sue for, recover, and collect from the property of any insane person maintained under the provisions hereof, sent from any county in such district, or from any person or persons legally bound to support such insane person or persons, the amount expended in the arrest, examination and transportation of such insane person, and in his or her custody, maintenance and treatment.

Sec. 714. Said commissioners shall each be allowed the sum of six dollars for each day they may be actually and necessarily engaged in the discharge of their duties as herein prescribed, and twenty cents for each mile actually and necessarily traveled by them in peformance of such duties.

SEC. 715. Said commissioners shall certify to the Territorial auditor such amounts as may be payable for expenses incurred by virtue hereof, and the auditor shall draw his warrant upon the Territorial treasurer therefor.

SEC. 716. There shall be allowed to the probate judge or commissioner the following fees: For the examination, to include all necessary entries, three dollars; for each warrant issued, one dollar.

SEC. 717. And there shall be allowed to the sheriff the following fees: For arresting and bringing the person charged with insanity before the probate judge, or, in the absence of the probate judge, the chairman of the county commissioners, and subpœnaing witnesses, the same fees as are allowed by law in other cases; for taking an insane person to the place designated by the probate judge or chairman aforesaid, five dollars per day for the time necessarily employed, and twenty cents for each mile necessarily traveled, and all necessary disbursements for the support of the insane person, to be audited by the county commissioners, and paid out of the county treasury of the county in which said person shall be adjudged insane.

SEC. 718. It shall be the duty of said board of commissioners to make full report of all their proceedings under this article to the legislative assembly at such regular session thereafter; and in case a vacancy occurring in said board during a recess of the assembly, the governor shall designate some suitable person to fill such vacancy until the next meeting of the legislative assembly.

SEC. 719 The sum of fifteen thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, for the purpose of carrying out the provisions of this article during the years commencing January 1st, 1870, and January 1st, 1871.

NOTE.—Act January 12th, 1872.

ARTICLE II.

REMOVAL OF INSANE FROM THE TERRITORY.

SEC. 720. That hereafter whenever the friends or relatives of any inmate of the Montana insane asylum shall apply for assistance or permission to remove any patient in said asylum from thence to his or her friends or relatives in any State or Territory, the governor of this Territory is hereby authorized and empowered to have such insane person conveyed to his or her relatives or friends, at the expense of the Territory of Montana, if he shall deem such action conducive to the interests of this Territory, and the welfare of the insane person.

SEC. 721. That the Territorial auditor be, and he is hereby authorized and instructed to draw warrants on the Territorial treasurer in favor of the governor of this Territory for such amounts, and at such times as may be required for the purpose mentioned in section 720 of this article.

NOTE.—Act February 8th, 1876.

ARTICLE III.

INDIGENT INSANE.

SEC. 722. That the governor be and is hereby authorized by publication for three weeks in a newspaper published at the capital of the Territory, inviting proposals for the care and maintenance of the indigent insane of Montana Territory, and to let the contract to the lowest responsible bidder; but the governor shall have the right to reject any and all bids, and to make a private contract, provided such contract can be made at a less price than any bids made under publication for proposals, and that such indigent insane shall be maintained under such contract so long as in the judgment of the governor the interests of the Territory will be subserved thereby; and that upon the receipt of any account for such maintenance the governor shall certify to the same, if it be correct, and thereupon it shall be the duty of the Territorial auditor to draw his warrant upon the Territorial treasurer for an amount of money sufficient to pay therefor: *Provided*, That the governor shall not contract, under this resolution, for a period extending beyond the completion of the asylum for the insane; and, *provided further*, that whenever, in the judgment of the governor, it is desirable to send such insane person to friends out of the Territory, he may do so at the expense of the Territory; and whenever in his judgment, the interests of such insane persons, and of the Territory will be promoted by changing the said contract to some other institution or person, at a rate not exceeding that mentioned in said communication, he may do so, and the expenses shall be paid by warrants drawn on the Territorial treasurer, to be sold by the auditor, to raise the money herein authorized to be expended: *Provided, further*, That the costs necessarily attending the adjudication of insanity, and transportation of any insane persons to the place provided for their care and maintenance, shall be paid by the county where such insane person resides at the time he may be adjudged to be insane: *Provided, further*, That idiotic persons shall be classed with insane persons under the provisions of this article, and the word "maintenance," in this article, shall be construed to mean and include medical attendance.

NOTE.—Act February 16th, 1877.

CHAPTER XXXI.

INSURANCE COMPANIES AND AGENTS.

Sec. 723. *Capital of foreign companies; to appoint agent; service of process.*
Sec. 724. *Certified copy of charter and statement of assets, etc., to be filed.*
Sec. 725. *Agent can not act without auditor's certificate.*
Sec. 726. *License.*
Sec. 727. *Penalty for violation.*

SEC. 723. That it shall be unlawful for any fire insurance association, company, corporation, or partnership, incorporated by, or under, or organized pursuant to the laws of any foreign government, State or Territory, of the United States, other than the Territory of Montana, directly or indirectly to take any risks or transact any business of fire insurance in this Territory, unless possessed of an actual capital of two hundred thousand dollars; and any such company, association or corporation, desiring to transact any business as aforesaid in, or relating to the property of this Territory, by agent, or agents, within this Territory, or otherwise, shall first appoint an agent or attorney within this Territory, who shall be a resident or residents thereof, on whom process of law can be served; which appointment shall be in writing and under the seal of such company or corporation, and shall fully authorize such person to appear as the agent or attorney of such company or corporation, in all suits commenced against such company or corporation, in this Territory, until another agent or attorney shall be appointed for that purpose, which written instrument shall be filed in the office of the auditor of this Territory, and by him recorded and preserved; and when so filed said appointment shall continue until another agent or attorney shall be substituted as aforesaid; and any process issued by virtue of the laws of this Territory, from any court in this Territory, and served upon such agent or attorney, by the proper officer, authorized to serve such process, shall be deemed a sufficient and personal service upon such company or corporation, and shall bind the same to all intents and purposes as though served upon the officers of said company in this Territory; but such service may be made in any other manner provided by law.

Sec. 724. And every such company, association or corporation, shall file a certified copy of their act of incorporation, articles of association, charter or deed of settlement, together with a statement under the oath of the president, secretary, a trustee or manager of such company or corporation, with the auditor of the Territory, which statement shall state the name of the company or corporation, the place where located, the amount of its capital, with a detailed statement of its assets, incumbrances and liabilities, including all claims against the company; also a copy of the last annual report of the company or corporation, which statement shall, after the first year, be renewed annually, on or before the 1st day of January of each year; and no insurance agent in this Territory shall, after the first day of August, 1879, transact any insurance business within this Territory, for or on behalf of any insurance company or corporation, who shall not have complied with the provisions of this chapter, and received a certificate from the auditor of this Territory, as hereinafter provided.

Sec. 725. It shall not be lawful for any agent for such company to transact any business until he shall first procure a certificate from the auditor of the Territory, stating that such company has complied with this chapter applying to such company, that the said company is solvent, as appears from the evidence in his office, and the name of the attorney appointed by the company, for which certificate the auditor may receive one dollar for the use of the Territory.

Sec. 726. Every fire insurance company, before transacting any fire insurance business within this Territory, or soliciting or taking any risk, or effecting or issuing any policy, upon any property in this Territory, from and after May the first, 1879, shall procure a license to transact such business from the treasurer of the county in which its business shall be carried on, and pay therefor at the rate of seven dollars and fifty cents per quarter, or forty dollars per annum; and all moneys received for such licenses shall be applied to the maintenance of the fire department of the town or city where such business shall be carried on, if there shall be such fire department there established; if not, then such moneys shall go to the general fund of such county.

Sec. 727. Any violation of any provisions of this chapter shall subject the person violating the same to a penalty of five hundred dollars, to be recovered in civil action, for the benefit of the Territory of Montana, from any person violating any provisions thereof.

Note.—Act February 21st, 1879.

CHAPTER XXXII.

INTEREST.

Sec. 728. *Legal rate of interest.*
Sec. 729. *Creditors allowed to collect ten per cent. interest in certain cases.*
Sec. 730. *Parties may agree to higher rate of interest; agreement to be enforced by courts.*

Sec. 728. The legal rate of interest on the forbearance or loan of any money, when there is no agreement between the parties, as specified in section 730 of this chapter, shall be ten per centum per annum.

Sec. 729. Creditors shall be allowed to collect and receive interest when there is no agreement as to the rate thereof, at the rate of ten per cent. per annum for all moneys after they become due, on any bond, bill, promissory note, or other instrument of writing, and on any judgment rendered before any court or magistrate authorized to enter up the same, within the Territory, from the day of entering up such judgment until satisfaction of the same be made; likewise on money lent, or money due on the settlement of accounts, from the day of such settlement of accounts, between the parties, and ascertaining the balance due; on money received to the use of another, and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay.

Sec. 730. The parties to any bond, bill, promissory note, or other instrument of writing, may stipulate therein the payment of a greater or higher rate of interest than ten per centum per annum, and any such stipulation contained in any such instrument of writing may be enforced in any court of law or equity of competent jurisdiction in this Territory. And when any instrument provides for a certain rate of interest, from date until paid, or after due until paid, or in words to like effect, it shall be construed to mean interest at the stipulated rate until the same is paid.

Note.—Act January 12th, 1872.

CHAPTER XXXIII.

IRRIGATION—WATER RIGHTS.

ARTICLE I.

RIGHTS OF PERSONS AND CORPORATIONS.

Sec. 731. *Any person or company holding land entitled to water for irrigation.*
Sec. 732. *Persons to have right of way for ditch or canal.*
Sec. 733. *Right to extend only so far as is necessary.*
Sec. 734. *Date of appropriation to determine rights.*
Sec. 735. *Water to be made available without injury to prior appropriator.*
Sec. 736. *Person digging ditch to be liable for damage.*
Sec. 737. *This act not to interfere with rights acquired; its passage.*
Sec. 738. *This act not to prevent use of water for mining, etc.*
Sec. 739. *Persons constructing ditches across roads to repair same.*
Sec. 740. *Penalty for violating preceding section.*
Sec. 741. *Rights of persons to be governed by local laws, rules, and customs, decisions of supreme court, etc.*

SEC. 731. That any person or persons, corporation or company, who may have or hold a title, or possessory right or title, to any agricultural lands within the limits of this Territory, as defined by the organic act thereof, shall be entitled to the use and enjoyment of the waters of the streams or creeks in said Territory for the purposes of irrigation and making said land available for agricultural purposes to the full extent of the soil thereof: *Provided,* That in all cases where, by virtue of prior appropriation, any person may have diverted all the water of any stream, or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream for such purpose of irrigation, and there shall at any time be a surplus of such water so diverted, over and above what is actually used for such purpose by such prior appropriator, such person shall be required to turn and cause to flow back into such stream, such surplus water, and upon failure to do so, within five days after demand being made upon him in writing by any person having a right to the use of such surplus water, such person, so diverting the same, shall be liable to the person aggrieved thereby in the sum of twenty-five dollars for each and every day such water shall be withheld after such notice, to be recovered by civil action by any person having a right to the use of such surplus water.

NOTE.—Act February 21st, 1879.

SEC. 732. That when any person or persons, corporation or company, owning or holding land as provided in section 731 of this article, shall have no available water facilities upon the same, or whenever it may be necessary to raise the waters of said stream or creek to a sufficient height to so irrigate said land, or whenever such lands are too far removed from said stream or creek to so use the waters thereof as aforesaid, such person or persons, corporation or company shall have the right of way through and over any tract or piece of land for the purposes of conducting and conveying said water by means of ditches, dykes, flumes, or canals, for the purpose aforesaid.

SEC. 733. That such right to so dig and construct ditches, dykes, flumes, and canals, over and across the lands of another, shall only extend to so much digging, cutting, or excavations as may be necessary for the purposes required.

SEC. 734. That in all controversies respecting the rights to water, under the provisions of this article, the same shall be determined by the date of the appropriation, as respectively made by the parties.

SEC. 735. That the waters of the streams or creeks of the Territory may be made available to the full extent of the capacity thereof for irrigating purposes, without regard to deterioration in quality or diminution in quantity, so that the same do not materially affect or impair the rights of the prior appropriator; but in no case shall the same be diverted or turned from the ditches or canals of such appropriator, so as to render the same unavailable.

SEC. 736. That any person or persons, corporation or company, damaging or injuring the lands or possessions of another, by reason of cutting or digging ditches or canals, or erecting flumes, as provided by section 732 of this article, the party so committing such injury or damage shall be liable to the party so injured therefor.

SEC. 737. That this article shall not be so construed as to impair, or in any way or manner interfere with, the rights of parties to the use of the water of such streams or creeks acquired before its passage.

SEC. 738. That this article shall not be so construed as to prevent or exclude the appropriators of the waters of the said streams or creeks for mining, manufacturing, or other beneficial purposes, and the right also to appropriate the same is hereby equally recognized and declared.

SEC. 739. That any person or persons, corporation or company, who may dig and construct ditches, dykes, flumes, or canals, over or across any public roads or highways, or who use the waters of such ditches, dykes, flumes, or canals, shall be required to keep the same in good repair at such crossings or other places where the water from any such ditches, dykes, flumes, or canals, may flow over, or in any wise injure, any roads or highways, either by bridging or otherwise.

SEC. 740. Any person or persons offending against section 739 of this article, on conviction thereof, shall forfeit and pay for every such offence a penalty of not less than twenty-five dollars, nor more than one hundred dollars, to be recovered, with costs of suit, in civil action, in the name of the Territory of Montana, before any court having jurisdiction; one-half of the fine so collected shall be paid into the county treasury for the benefit of the common schools of the county in which the offence was committed, and the other half shall be paid to the person or persons informing the nearest magistrate that such offence has been committed. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may, by order of the court, be confined in the county jail until such fine and costs shall have been paid.

SEC. 741. That in all controversies respecting the right to water in this Territory, whether for mining, manufacturing, agriculture, or other useful purposes, the rights of the parties shall be determined by the dates of appropriation respectively, with the modifications heretofore existing under the local laws, rules, or customs and decisions of the supreme court of the Territory.

NOTE.—Act of January 12th, 1872.

ARTICLE II.

REGULATING THE SALE OF WATER.

Sec. 742. Owners of water must sell surplus if demanded.
Sec. 743. Duty of purchaser to dig ditches, etc.
Sec. 744. Right to surplus and enforcement thereof.
Sec. 745. Purchaser acquires no right to sell.

SEC. 742. That any person or persons, company or corporation, having the right to use, sell, or dispose of water, and engaged in using, selling, or disposing of the same, who shall have a surplus of water not used, or sold, or any person or persons, corporation or company, having a surplus of water and the right to sell and dispose of the same, shall, and they or it are hereby required, upon the payment or tender to the person or persons entitled thereto, an amount equal to the usual and customary rates per inch, to convey and deliver to the person or persons, company or corporation, such surplus of unsold water, or so much thereof for which said payment or tender shall have been made, and shall continue so to convey and deliver the same weekly so long as said surplus of unused or unsold water shall exist and said payment or tender made as aforesaid.

SEC. 743. That any person or persons, corporation or company, desiring to avail themselves of the provisions of this article, shall, at their own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by it or them, and shall pay or tender to the person or persons, corporation or company having a right to the use, sale, or disposal thereof, an amount equal to the necessary costs and expense of tapping any gulch, stream, reservoir, ditch, flume, or aqueduct, and putting in gates, gauges, or other proper and necessary appliances usual and customary in such cases, and until the same shall be so done, the delivery of the said surplus water shall not be required as provided by section 742 of this article.

SEC. 744. That any person or persons, corporation or company, constructing the necessary ditches, aqueducts, or flumes, and making the payments or tenders hereinbefore provided, shall be entitled to the use of so much of the said surplus water as said ditches, flumes, or aqueducts shall have the capacity to carry, and for which payment or tender shall have been made as aforesaid, with all the rights and privileges incidental thereto so long as said unsold or surplus water exists and said payment or tender shall be or have been made, and may institute and maintain any appropriate action, at law or in equity, for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diverson of the same.

Sec. 745. That nothing in this article shall be so construed as to give the person or persons, corporation or company, acquiring the right to the use of water as hereinbefore provided, the right to sell or dispose of the same after being so used by it or them, or prevent the original owner or proprietor from re-taking, selling, and disposing of the same in the usual and customary manner, after it is so used as aforesaid.

Note.—Act of February 16th, 1877.

CHAPTER XXXIV.

JAILS AND PRISONERS.

Sec. 746. *A jail shall be built in each county.*
Sec. 747. *County commissioners to have direction of jail and treatment of prisoners.*
Sec. 748. *Sheriff to have custody of jail and prisoners, to furnish sustenance, clothing, etc.*
Sec. 749. *Sheriff may appoint a jailer.*
Sec. 750. *In case of death or resignation of sheriff, jailer to have charge.*
Sec. 751. *Penalty for defrauding prisoners.*
Sec. 752. *Sheriff to make return to county commissioners of prisoners in jail; when.*
Sec. 753. *Persons in custody of United States authorities may be committed to jail on payment of fees, etc.*
Sec. 754. *Prisoners confined for inability to pay fines, etc., may be hired out; earnings; how disposed of.*
Sec. 755. *Governor, for sufficient reasons, may order prisoners removed to another jail.*
Sec. 756. *Expenses to be paid by county from whence removed.*
Sec. 757. *Sheriff to convey prisoners to penitentiary.*
Sec. 758. *Convicts sentenced to imprisonment may be compelled to labor during their term.*
Sec. 759. *Such labor to be done under direction of county commisioners.*
Sec. 760. *Corporate authorities of cities authorized to work or employ criminals.*
Sec. 761. *Officers empowered to chain prisoners to prevent escape.*
Sec. 762. *Unruly prisoners; how punished.*

Sec. 746. There shall be built or provided, and kept in good repair, in each county, one common jail, at the expense of the county.

Sec. 747. The county commissioners shall have the care of building, inspecting, and repairing such jail, and shall, once every three months, inquire into the state, as respects the security thereof, and the treatment and condition of prisoners, and shall take all necessary precaution against escape, sickness, or infection.

Sec. 748. The sheriff shall have the custody of the jail in his county, and of the prisoners therein, and shall keep the same, personally or by his deputy, for whose debts he shall be responsible, and shall furnish, at the expense of the proper county, all necessary sustenance, bedding, clothing, fuel, and medical attendance for the prisoners committed to his custody. (*See Sec. 585.*)

Sec. 749. The sheriff may appoint a jailer, who, in the absence or disability of the sheriff, shall have the custody of the jail and the prisoners.

Sec. 750. In case of the death, resignation, or removal of the sheriff, the person provided for by law to supply his place shall have charge of the county jail of his proper county, and all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects, to the provisions of this chapter.

Sec. 751. If any sheriff or jailer shall defraud any prisoner of his allowance, or shall not provide a reasonable allowance and accommodation, he shall forfeit fifty dollars for each offence, to be recovered by an action for debt by the county commissioners, for the use of the county.

Sec. 752. The sheriff, or other officer performing the duties of sheriff, shall, five days previous to the opening of the district court in the district in which his county is situated, return to the commissioners of his county a certified list of the names of all prisoners then in his custody, with the time and cause of their confinement, and the length of the term for which they were committed, and he shall also return to said commissioners, within five days after the close of said term of court, the name and cause and term of commitment of every prisoner committed during said term of court, and any jailer who shall neglect to make such return, for every such neglect shall pay a fine not to exceed fifty nor less than twenty dollars, to be imposed at the next term of said court, on information of said commissioners of such neglect, and such fine shall go to the county.

Sec. 753. Persons may be committed under the authority of the United States to any jail in this Territory upon payment of the expenses of supporting such prisoners, ten dollars per month to the county, for the use of the jail, and all legal fees to the jailer, and the sheriff shall receive such prisoners and subject them to the same discipline and treatment, and be liable for any neglect of duty, as in the case of other prisoners; but the county, in no case, shall be liable for the escape of such prisoner or prisoners.

Sec. 754. Whenever any prisoner under conviction for any criminal offence shall be confined in jail for any liability to pay any fine, forfeiture, or costs, or to procure sureties, the district court, upon satisfactory evidence of such inability, may, in lieu thereof, confine such person in the county jail at the rate of five dollars per day until the forfeiture of costs so imposed shall be satisfied; and, in such case, the sheriff may procure chains for the safe keeping of such prisoner or prisoners, and hire out or put to labor such prisoner or prisoners, and shall charge the earnings of the same to himself for the sustenance of said prisoners, and any surplus that may accrue from such labor shall be paid into the county treasury to the credit of said prisoner.

Sec. 755. Whenever, from any sufficient cause, the sheriff shall think it expedient that the prisoner be removed from the jail of his county, on application in writing to the governor of the Territory by the sheriff and commissioners of such county, the governor may order such prisoner to be removed to some other jail, anywhere within the Territory, there to be detained in the same manner as in the jail from whence they were moved, until remanded back by a similar process, or discharged according to law.

SEC. 756. All the expenses of removing and maintaining prisoners, incurred under the preceding section, shall be defrayed by the county from which they were so removed.

SEC. 757. Within five days after the adjournment of a term of court in each county, the sheriff shall convey to the Territorial penitentiary all prisoners that shall have been sentenced to imprisonment in the penitentiary, and deliver such prisoners to the keeper thereof, in accordance with the sentence of the court.

SEC. 758. Whenever any person or persons in this Territory shall have been sentenced to imprisonment for any term for the commission of any crime, misdemeanor, or felony, against laws of this Territory, or in violation of any city ordinance of any incorporated city in this Territory, by a judgment of any court or judge thereof, justice of the peace, or municipal court, or shall have been committed to jail for any term in default of the payment of any fine or penalty imposed by any such courts or justices, the person or persons so imprisoned may be required and compelled to work and perform labor during his or their respective terms of imprisonment.

SEC. 759. The county commissioners of any county of this Territory are hereby authorized and empowered to enforce the provisions of this chapter in their respective counties, and to employ any criminal or criminals committed to the jails of their respective counties, as referred to in the preceding section, in the performance of any work or labor, or in any occupation or trade, as to them shall seem proper, such work to be carried on under the superintendence of any sheriff, deputy sheriff, or constable of such county as said commissioners may designate; the benefits, profits, and results of such work and labor to be enjoyed and used are to accrue to the county in which such criminal or criminals may be confined.

SEC. 760. The city council, or authorities of any incorporated city in this Territory, are also authorized to work or employ any prisoner or prisoners committed to jail for the violation of any city ordinance of such city, or in default of the payment of any fine or penalty imposed for the violation of any ordinance of such city, such labor to be performed under the supervision of any marshal, constable, or police officer of such city as the authorities may designate, the profits and results of such labor to accrue to such city. All incorporated cities and towns of this Territory are hereby granted the full and complete privileges of this chapter.

SEC. 761. The officers herein mentioned are fully authorized and empowered to secure and fasten with chains or other device any prisoner or prisoners in the performance of any such labor, so as to prevent the escape of any such prisoner or prisoners.

SEC. 762. Any person or persons who may be put to labor or assigned labor to perform, under the provisions of this chapter, who shall be refractory and unruly, who shall refuse to perform the task assigned, who shall willfully injure or destroy any material given to be worked upon, or any tool, implement, or instrument whatever, with which to perform such labor, or who shall perform such task or tasks negligently, may be placed in solitary confinement, and be fed upon bread and water, or subjected to such like punishment by the officers having the same in charge, until the said prisoner or prisoners shall agree to do and perform the labor assigned in a satisfactory manner, and with due diligence and care.

NOTE.—Act of January 12th, 1872.

CHAPTER XXXV.

JOINT DEBTORS.

Sec. 763. *One partner may be discharged without discharging his co-partners.*
Sec. 764. *Note or memorandum exonerating debtor.*
Sec. 765. *Co-partners not discharged; extent of payment.*
Sec. 766. *Right of co-partners against compromising partner.*
Sec. 767. *Above provisions extend to all joint debtors.*
Sec. 768. *Not to apply to principal debtor when joint debtors are sureties.*
Sec. 769. *Judgment and execution in such cases.*

SEC. 763. That whenever any co-partnership firm shall be dissolved by mutual consent or otherwise, it shall be and may be lawful for any one or more of the individuals who was or were embraced in such co-partnership firm, to make a separate composition or compromise with any one or all of the creditors of such co-partnership firm; and such composition or compromise shall be a full and effectual discharge to the debtor or debtors making the same, and to them only, of and from all and every liability to the creditor or creditors with whom the same is made or incurred, by reason of his or their connection with such co-partnership firm, according to the terms of such compromise.

SEC. 764. Every such debtor or debtors making such composition or compromise, may take from the creditor or creditors with whom he may make the same, a note or memorandum in writing exonerating him or them from all and every individual liability incurred by reason of such connection with such co-partnership firm, which note or memorandum may be given in evidence by such debtor or debtors in bar of such creditor's right of recovery against him or them; and if such liability shall be by judgment in any court of record in this Territory, then on a production to and filing with the clerk of such court the said note or memorandum in writing, such clerk shall discharge such judgment of record as far as the said compromising debtor or debtors shall be concerned.

SEC. 765. Such compromise or composition with an individual member of a firm shall not be so construed as to discharge the other co-partners, nor shall it impair the right of the creditor to proceed against the members of such co-partnership firm as have not been discharged. And the member or members of such co-partnership firm so proceeded against shall be permitted to set off any demand against said creditor or creditors which could have been set off had such suit been brought against all of the individuals composing such firm; nor shall such compromise or discharge of an individual of a firm prevent the other members of such firm from availing themselves of any defence that would have been available had this chapter not been passed, except that they shall not set up the discharge of the other co-partners unless it shall appear that all were intended to be discharged: *Provided,* That the discharge of any such co-partner shall be deemed a payment to the creditor equal to the proportionate interest of the partner discharged in the partnership concern.

Sec. 766. That such compromise or composition of an individual of a firm with a creditor of such firm, shall in nowise affect the right of the co-partners to call on the individual making such compromise for his ratable portion of such co-partnership debt, the same as if this law had not been passed.

Sec. 767. The above provisions in reference to co-partners of a firm, shall extend to all joint debtors, except as provided in section 768 of this chapter, who are hereby authorized, individually, to compound or compromise, for their joint indebtedness, with the like effect in reference to creditors and to joint debtors of the individual so compromising, as above provided in reference to co-partners.

Sec. 768. The foregoing provisions shall not be construed to apply to any debtor or debtors who, by the express terms of the contract upon which the indebtedness exist or arose, was the principal debtor while the other joint debtor or debtors were sureties.

Sec. 769. That upon the rendition of any judgment in any court in this Territory, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors, and others of the said defendants are sureties of such principal debtor or debtors, the court may order the judgment, so to state, and upon the issuance of an execution upon such judgment, it shall direct the sheriff to make the amount due thereon out of the goods and chattels, lands and tenements of the principal debtor or debtors, or if sufficient thereof can not be found within his county to satisfy the same, then that he levy and make the same out of the property, personal or real, of the judgment debtor who was surety.

Note.—Act of February 12th, 1874.

CHAPTER XXXVI.

JOINT RIGHTS.

Sec. 770. *On death of joint tenant interest to descend to heirs, not to survivor.*
Sec. 771. *Injury by joint tenant to joint property; what action to be brought.*
Sec. 772. *All joint obligations to be joint and several.*

Sec. 770. If any partition be not made between joint tenants, the property of those who die first shall not accrue to the survivor or survivors, but descend or pass by devise, and shall be subject to debts, dower, charges, etc., or transmissible to execution or administration, and be considered to every intent and purpose in the same view as if such deceased joint tenants had been tenants in common.

SEC. 771. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy, tenancy in common, or co-partnery, the party aggrieved shall have his action of trespass or trover for the injury in the same manner as he would have if such joint tenancy, tenancy in common, or co-partnery did not exist.

SEC. 772. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

NOTE.—Act of January 12th, 1872.

CHAPTER XXXVII.

JURORS.

Sec. 773. *County commissioners to select jurors; manner of selection, etc.*
Sec. 774. *List delivered to clerk; who shall issue venire.*
Sec. 775. *Venire to be returned to clerk; when.*
Sec. 776. *Box to be locked; key kept by clerk.*
Sec. 777. *Manner of drawing and summoning additional jurors.*
Sec. 778. *Selection of grand jurors; time of summons.*
Sec. 779. *Selection of additional grand jurors.*
Sec. 780. *Who are competent jurors.*
Sec. 781. *Who are exempt from serving on jury.*
Sec. 782. *Penalty for non-attendance of jurors.*
Sec. 783. *Exempt firemen to produce certificate of payment of dues.*
Sec. 784. *Penalty, if secretary of company issue false certificate.*

SEC. 773. The county commissioners of any county in which a term of the district court is or may be held shall, at least twenty days prior to the commencement of said term of court, select the names of one hundred persons lawfully qualified to serve as jurors, from the county assessor's books of the county, provided that number of names are contained in such assessor's book, and the names of the persons so selected, after being written on separate slips of paper, shall be deposited in a box to be provided for such purpose, and from the names so deposited the county commissioners shall alternately draw the names of eighteen persons, who shall be summoned as trial jurors for the next ensuing term of such district court.

SEC. 774. The list of names so drawn and certified to by the clerks of the county commissioners as selected by them, shall thereupon be delivered to the clerk of the court for which such jury may be drawn. The clerk upon the receipt of the same, shall immediately issue a *venire* directed to the sheriff of the county, commanding him to summon the persons so named as trial jurors for such term of court, and the sheriff shall summon such named persons at least five days prior to the commencing of such term of court.

SEC. 775. The *venire*, as provided for in section 774 of this chapter, shall be returned to the clerk of such court by the sheriff aforesaid, at least two days before the commencement of such term of court, and such *venire*, after its return, shall be subject to the inspection of any officer or attorney of the court.

SEC. 776. The box containing the residue of the names of the jury list as aforesaid, shall, after such drawing, be locked up, and the key deposited with the clerk of the court for which the jury is summoned, and by him safely kept for future use by the aforesaid officer, or as further provided in this chapter.

SEC. 777. When at any time during a term of the court it shall become necessary to summon other jurors than as hereinbefore provided for, the clerk shall, in open court, under the direction of the judge thereof, from such box draw a sufficient number of names to constitute additional trial jurors during such term of court: *Provided*, In case any such jurors so drawn reside at a great distance from the place where the court is held, the court may, in its discretion, dispense with summoning such juror, and order another to be drawn instead thereof, and the clerk shall issue a *venire*, directed to the sheriff, for the summoning of such person as trial juror, and the sheriff shall proceed forthwith to summon the same as such trial juror, and, with all possible diligence, make return with his proceeding thereon.

SEC. 778. It shall be the duty of the board of county commissioners of the county, at least twenty days prior to the assembling of a court authorized by law, to inquire into public affairs by the intervention of a grand jury, to select the names of twenty persons eligible to serve as jurors, and, upon a *venire* being issued by the clerk of such court, the sheriff shall, at least five days prior to the meeting of the court, summon said persons to appear on the first day of the next term, and from such panel the court shall select sixteen persons who shall constitute such grand jury.

SEC. 779. When, from any cause, on the meeting of, or during the term of a court authorized by law to inquire into public offences by the intervention of a grand jury, and a grand jury is wanted, and there is not a sufficient number of jurors present, or those summoned have been discharged, a sufficient number to complete such grand jury, or constitute a new grand or trial jury, as the case may be, it shall be lawful for such judge and sheriff to prepare a list of the names of a sufficient number of persons competent to serve as trial or grand jurors, and deposit such names in a box, and, at any time during the term of the court when a juror shall be required, names of persons shall be drawn therefrom by the clerk, as provided in section 777 of this chapter.

NOTE.—Act January 12th, 1872.

SEC. 780. Any white male person of lawful age, who is a citizen of the United States, or who has declared his intention to become such, who is a tax payer and a *bona fide* resident of the county, shall be competent to serve as a grand or trial juror.

NOTE.—Act May 7th, 1873.

SEC. 781. The following persons shall be exempted from serving as grand or trial jurors, viz.: All priests or ministers of the gospel, attorneys and counselors at law, practicing physicians, all county, township or Territorial officers, editors, and regularly enrolled firemen in active service, not exceeding sixty-five in number to each company, and all idiots and insane persons.

SEC. 782. Any person summoned, as aforesaid, to serve as a juror, who shall fail to attend, unless excused by the court, shall be fined in any sum not exceeding fifty dollars, at the discretion of the court, and be imprisoned in the county jail until such fine is paid..

NOTE—Act January 12th, 1872.

SEC. 783. That from and after the passage of this section no member of any organized fire company in the Territory shall be exempt from serving as a juror, or from the payment of a poll road tax, unless he can furnish the court, when called as a juror, or the collector of the county, when required to pay his taxes, a certificate from the secretary of the company of which he is a member, that he is not in arrears of dues or fines to such fire company.

SEC. 784. Any secretary of any fire company in the Territory who shall issue such certificate to any member who has not paid up all dues and fines to the company of which he is a member, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined in any sum not exceeding fifty dollars.

NOTE.—Act February 11th, 1876.

CHAPTER XXXVIII.

LAWS.

Sec. 785. *Laws, etc., when to take effect.*
Sec. 786. *Laws, etc., which do not take effect immediately, when to be in force.*
Sec. 787. *Form of enacting clause.*

SEC. 785. All acts and joint resolutions which declare that they take effect from and after their passage and approval by the governor, are hereby declared to so take effect only at the seat of government; and in other portions of the Territory allowing fifteen miles from the seat of government for each day.

SEC. 786. All acts and joint resolutions which do not take effect from and after their passage and approval by the governor, shall take effect and be in force in all parts of this Territory upon the day named in such act or joint resolution.

SEC. 787. That all acts of the legislative assembly of the Territory of Montana shall be designated, known, and acknowledged in each such act of said legislative assembly as follows:

Be it enacted by the legislative assembly of the Territory of Montana:

NOTE.—Act of January 12th, 1872.

COMMON LAW.

[*See chapter X, ante.*]

CHAPTER XXXIX.

LEGISLATURE.

[*See post chap. 62.*]

Sec. 788. *Resignations to be addressed to the governor; when; to presiding officer; when.*
Sec. 789. *Governor to issue writ of election to fill vacancy.*
Sec. 790. *Writ of election to be directed to sheriff.*
Sec. 791. *Sheriff shall cause election to be held.*
Sec. 792. *When district altered or divided, how election to be held.*
Sec. 793. *Time and place of regular sessions.*

SEC. 788. If any member elected to either house of the legislative assembly shall resign during the recess thereof, he shall address and transmit his resignation in writing to the governor; and when any such member shall resign during the session, he shall address his resignation in writing to the presiding officer of the house of which he is a member, which shall be entered on the journal; in which case, and in all cases of vacancies happening or being declared during any session of the general assembly, by death, expulsion, or otherwise, the presiding officer of the house in which such vacancy shall happen shall immediately notify the governor thereof.

SEC. 789. Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house during the recess, he shall, without delay issue a writ of election to supply such vacancy.

SEC. 790. When any vacancy shall happen in the council, for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when the vacancy shall happen in a district which shall have been divided or altered, after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house, for any county which shall have been districted after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county.

SEC. 791. The sheriff to whom any writ of election shall be delivered shall cause the election, to supply such vacancy, to be held within the limits composing the county or district, at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be set up, and the election to be held accordingly, in such part of their respective counties as composed part of the old county or district, for which the election is to be held, at the last preceding general election; and returns shall be made, and the certificate of election granted, in all things as if no division had taken place.

SEC. 792. When any district or county shall be so altered or divided during the term for which a member shall be elected, and the new district or county shall be authorized to elect their member before the expiration of the term of the former member, in that case the election to fill the vacancy shall be held for the district or county as it shall remain after such alteration or division, and not as it was at the last preceding general election.

NOTE.—Act January 12th, 1872.

SEC. 793. That the regular sessions of the legislative assembly of this Territory shall be held at the capital, and the next regular session thereof shall commence at 12 o'clock M. on the second Monday of January, A. D. 1879, and said sessions shall be held biennially thereafter, commencing at 12 o'clock M. on the second Monday of January of each year, upon which said sessions are to be held under the provisions of this section.

NOTE.—Act February 16th, 1877.

CHAPTER XL.

LICENSES.

Sec. 794. *License on billiard tables, etc.*
Sec. 795. *License on livery stables. etc.*
Sec. 796. *Bakery or confectionery.*
Sec. 797. *Buying and selling exchange, loaning money, etc.*
Sec. 798. *Merchantile licenses.*
Sec. 799. *Auctioneers' licenses.*
Sec. 800. *Restaurants, lodging houses, and hotels.*
Sec. 801. *Liquor dealers.*
Sec. 802. *Traveling merchant, hawker, or peddler.*
Sec. 803. *Foreign commercial agents.*
Sec. 804. *Distillers, brewers, rectifiers, etc.*
Sec. 805. *Gaming saloons.*
Sec. 806. *Butchers; farmers exempt.*
Sec. 807. *Picture galleries, photographists, etc.*
Sec. 808. *Roads, bridges, ferries, and water companies.*
Sec. 809. *Persons receiving toll or water rates to make quarterly statements to the treasurer.*
Sec. 810. *Males engaged in laundry business.*
Sec. 811. *Gift lottery; treasurer to collect no fee for issuing license.*
Sec. 812. *Bowling alleys.*
Sec. 813. *Stage and express companies.*
Sec. 814. *Time for which licenses may be granted.*
Sec. 815. *Duties of tax collectors.*
Sec. 816. *Enforcement provisions; license lien.*
Sec. 817. *Penalty for transacting business without a license.*
Sec. 818. *Penalty if treasurer neglects duty; duty of district attorney.*
Sec. 819. *Distribution of license taxes.*

SEC. 794. There shall be levied and collected by the tax collector a license tax, as follows:

First. From each billiard table kept for public use, ten dollars per quarter.

Second. From the manager and lessee of every theatre, two dollars per day, or twenty dollars per month; and for each exhibition of opera or concert singers, minstrels, sleight-of-hand performances, legerdemain, and all other shows or exhibitions, (except that exhibitions and concerts for school or charitable purposes shall not be subject to the license herein provided for) the same as required for theatrical performances.

Third. All saloons where women are kept as waiters, five dollars per day, or fifty dollars per quarter.

Fourth. For each and every insurance company (*See Sec. 726, Chapter 31*).

Fifth. Each pawnbroker, twenty-five dollars per quarter.

Sixth. For each keeper of an intelligence office, ten dollars per quarter.

Seventh. For each assayer, ten dollars per quarter, provided he shall work for a compensation.

Each professional man, before practicing as such, all lawyers, dentists, physicians, surgeons, and all other professions, shall pay a license of sixteen dollars per annum: *Provided,* That all persons who draw any legal instrument, deed, power of attorney, or other document for which he charges a fee, shall be considered a professional man.

Sec. 795. All keepers of livery and feed stables shall pay a license of fifteen dollars per quarter; and all keepers of hay yards, corrals for feeding stock, or selling hay, shall pay a license of eight dollars per quarter; and all herders who keep or herd stock for hire, shall pay a license of ten dollars per quarter; ranchmen whose receipts for herding stock exceed twenty dollars per month, shall pay the same license as herders. All keepers of liveries who shall keep and use more than two buggies, carriages, sleighs, or other vehicles, shall pay a license of two dollars and fifty cents for each and every such vehicle, per quarter, in addition to the fifteen dollars above provided.

Sec. 796. Every person keeping a bakery or confectionery shall pay a license as follows: Those doing business amounting to two thousand dollars per month, in the aggregate, shall pay a license of fifteen dollars per quarter; those doing business amounting to one thousand dollars and not exceeding two thousand dollars per month, shall pay ten dollars per quarter; and all doing such business in an amount less than one thousand dollars per month, shall pay a license of six dollars per quarter.

Sec. 797. Any person or persons, private association, incorporation, or companies, who shall sell foreign or inland bills of exchange, loan money at interest, buy notes, bonds, or other evidence of indebtedness, or shall buy gold dust, gold or silver bullion, or gold or silver coin, or keep savings bank, or engage as a common carrier in transmitting or conveying gold dust, gold and silver coin, or bullion, from one place to another, for hire or profit, or receive general or special deposits of gold dust, gold or silver coin or bullion, or bank notes, shall procure a license before performing any act above enumerated, and shall pay therefor as follows:

Those doing business to the amount of fifty thousand dollars or over per quarter, shall pay one hundred dollars per quarter.

Those doing business to the amount of forty thousand [dollars] and under fifty thousand [dollars] per quarter, shall pay seventy-five dollars per quarter.

Those doing business to the amount of thirty thousand dollars, and under forty thousand [dollars] per quarter, shall pay fifty dollars per quarter.

Those doing business to the amount of twenty thousand dollars, and under thirty thousand dollars per quarter, shall pay thirty-five dollars per quarter.

Those doing business to the amount of ten thousand dollars, and under twenty thousand dollars per quarter, shall pay twenty-five dollars per quarter.

And all doing business or engaged in such transaction in any amount under ten thousand [dollars] and over two thousand dollars per quarter, shall pay fifteen dollars per quarter: *Provided,* That any person selling goods or property, other than money, for gold dust, gold or silver coin or bullion, shall not be required to procure a license under this section.

Sec. 798. Every person who has a fixed place of business, who may deal in goods, wares, or merchandise, wines or liquors, drugs or medicines, jewelry, or wares of precious metals, or who shall expose the same for sale, shall pay a license as follows:

Those whose sales are ten thousand dollars or more per month shall constitute the first class, and shall pay a license of fifty dollars per quarter; those whose sales are five thousand dollars and under ten thousand [dollars] per month shall constitute the second class, and shall pay a license of thirty dollars per quarter; those whose sales are two thousand dollars and under five thousand dollars per month shall constitute the third class, and shall pay a license of twenty dollars per quarter; and those whose sales are one thousand [dollars] and under two thousand dollars per month shall constitute the fourth class, and shall pay a license of fifteen dollars per quarter; and those whose sales are five hundred dollars and under one thousand dollars per month shall constitute the fifth class, and shall pay a license of ten dollars per quarter; and those whose sales are under five hundred dollars per month shall constitute the sixth class, and shall pay a license of five dollars per quarter: *Provided,* The sales of liquors or wines licensed in this section shall not be in less quantities than one quart.

Note.—Act February 16th, 1877.

Sec. 799. All auctioneers shall procure a license, and shall pay therefor as follows: Those who shall sell or offer for sale cattle, horses, mules, or other live stock, in any town or city containing two thousand or more inhabitants, shall pay twenty-five dollars per month; and all auctioneers who shall sell at auction any such stock outside of any such town or city containing less than two thousand inhabitants, shall pay fifteen dollars per quarter; and auctioneers who shall sell property of any kind at public sale in any place as above specified, shall procure a license, and shall pay therefor as follows: All such auctioneers who shall do business in any town or city containing two thousand or more inhabitants shall pay ten dollars per month; and all such auctioneers who shall sell outside of any town or city, or in any town or city containing less than two thousand inhabitants, shall pay fifteen dollars per quarter, or five dollars per month.

SEC. 800. All keepers of restaurants, lodging-houses, and hotels, shall pay a license as follows: Those doing business in the aggregate of less than one thousand dollars per quarter shall pay five dollars per quarter; and all whose business is over one thousand dollars per quarter shall pay five dollars for each additional thousand dollars or fractional part thereof per quarter; and all such keepers of restaurants, lodging houses, and hotels, shall make at the end of each quarter a sworn statement of the total amount of their business for the quarter last preceding: *Provided,* that hotel keepers who shall transact business one mile or over outside of any city, town, or village, shall not be required to pay the license required in section 795 of this chapter.

SEC. 801. All persons who dispose of any spirituous or malt liquors in any portions less than one quart, shall, before the transaction of such business, obtain a license, for which he or they shall pay as follows: In any city, town, or village, that contains a population of three hundred or more, or within one mile of the limits thereof, the license shall be sixty dollars per quarter; and in any city, town, or village, where the population is less than three hundred, and more than one hundred, the license shall be forty dollars per quarter; and in any city, town, or village, where the population is less than one hundred and more than forty the license shall be twenty-five dollars per quarter; and all persons who dispose of any spirituous wine, or malt liquors, at any other place whatever, in quantities less than one quart, shall pay a license of fifteen dollars per quarter.

SEC. 802. That every traveling merchant, hawker, or peddler, who shall carry a pack or trunk, and shall sell goods, wares, or merchandise, shall pay a license of five dollars per quarter; if he travel with wagon or other vehicle and sell goods, wares, or merchandise, he shall pay a license of twenty dollars per quarter for each wagon or vehicle; if he travel with a pack animal and sell goods, wares, or merchandise, he shall pay a license of fifteen dollars per quarter for such pack animal: *Provided,* That no license shall be required to be paid by any person who sells any production of this Territory, raised or manufactured by himself.

NOTE.—Act February 16th, 1877.

SEC. 803. That all persons who may hereafter come into this Territory, and who shall take orders for the sale of any goods, wares, or merchandise, to be delivered after such orders, or shall sell, or offer to sell, any goods, wares, or merchandise, by sample, such persons being commonly known as traveling commercial agents, shall, before carrying on any such business, pay a license therefor of ten dollars per quarter in each county where such business may be transacted.

NOTE.—Act February 16th, 1877.

SEC. 804. Every distiller, manufacturer, or rectifier of spirituous liquors shall pay a license of thirty dollars per month; every brewer, or manufacturer of malt liquors, whose business amounts to one thousand dollars or more per month, shall pay a license of twenty dollars per month; and those whose business amounts to less than one thousand and more than five hundred, shall pay a license of fifteen dollars per month; and all those whose business amounts to less than five hundred dollars per month, shall pay a license of five dollars per month; and every manufacturer of pop, soda, or other drink put up in bottles, except that above specified, shall pay a license of five dollars per month.

SEC. 805. Any person or persons who shall keep any house, or saloon, or room, where any banking game, or other game of chance, is dealt or played for money, or anything representing money is used, bet, ventured, or hazarded, in any city, town, or village whose population is greater than five hundred persons, shall pay a license of forty dollars per month; in any city, town, or village whose population is less than five hundred and more than one hundred, shall pay a license of twenty dollars per month; in all other places, ten dollars per month. But this section shall not be construed to authorize or permit any game prohibited by the laws of this Territory.

SEC. 806. Every butcher shall pay a license of seven dollars per month. *Provided,* That any butcher carrying on business more than two miles from any city, town or village containing less than one hundred inhabitants, and whose monthly receipts are less than one thousand dollars, shall pay a license tax of ten dollars per quarter. *And provided, further,* That this section shall not apply to farmers or stock-growers having no established place of business, who shall kill and dispose of any meat in quantities not less than one quarter.

SEC. 807. Every keeper of a picture gallery, daguerrotypist, photographist, or other artist, shall pay a license tax of fifteen dollars per quarter, or five dollars per month.

SEC. 808. All incorporated roads, bridges or ferries, or water company, or any other incorporated company not specified in the provisions of this chapter, or any other company or association, person or persons, taking or receiving toll, whose quarterly receipts reach the sum of five hundred dollars, shall pay a license tax of twenty dollars per quarter; those whose quarterly receipts shall not exceed five hundred dollars, shall pay a license tax of ten dollars per quarter; those whose quarterly receipts shall reach one thousand dollars, shall pay a license tax of forty dollars per quarter; those whose quarterly receipts shall reach two thousand dollars, shall pay a license tax of eighty dollars per quarter; those whose quarterly receipts shall reach five thousand dollars per quarter, shall pay a license tax of one hundred and fifty dollars per quarter; and those whose quarterly receipts shall reach ten thousand dollars, shall pay a license tax of two hundred and fifty dollars per quarter: *Provided,* That nothing in this section shall apply to water ditches for mining, agricultural, and manufacturing purposes.

SEC. 809. That it shall be the duty of any corporate or other company, person or persons, receiving or charging toll or water rates, for any purpose whatever, four times in each year, to file with the treasurer of the county in which said company is located, doing business, or in which they have their office, a sworn statement of all their receipts and expenditures. And it shall be the duty of said treasurer to examine and report, and he shall have power to hear testimony for and against the same, and if he approve of the same, he shall proceed to collect the tax imposed by this chapter upon said company or corporation, as provided by law in other cases. And if such owner, officer, or agent, shall fail or refuse to make report as above required, it shall be the duty of said treasurer to estimate the receipts of such company, corporation or person, according to his best knowledge and information, and proceed to collect license, as provided in section 808 of this chapter; and no abatement or diminution of said treasurer's estimate shall be made.

SEC. 810. That all male persons in this Territory who are now or who may hereafter be engaged in the laundry business, shall pay a license of twenty dollars per quarter.

SEC. 811. Every person who shall carry on the gift lottery or prize distribution business within this Territory, shall pay a license therefor of fifty dollars per quarter: *Provided*, That no fee shall be collected by any county treasurer in this Territory for granting or issuing any license, in any case whatever, under the provisions of this chapter, or the act to which this is amendatory, any law heretofore passed to the contrary notwithstanding.

NOTE.—Act February 16th, 1877.

SEC. 812. Every keeper of a bowling alley shall procure a license, and shall pay therefor the sum of ten dollars per quarter for each alley so used.

SEC. 813. All stage or express companies engaged in carrying passengers or express matter, or any person, or association of persons, engaged in such business, shall procure a license, and shall pay to each and every county into or through which their line may extend, for each and every line, the sum of ten dollars per quarter.

SEC. 814. License may be granted under the provisions of this chapter, for one year or less, at the option of the applicant: *Provided*, No license shall be granted for a less time than that mentioned in the rates of assessments of licenses in this chapter.

SEC. 815. Each tax collector shall make diligent inquiry and examination as to all persons in his county liable to pay license required in this chapter; and it shall be his duty to require each person to state, under oath or affirmation, the amount of business which he, or the firm of which he is a member, or for which he is the agent or attorney, or the association or corporation of which he is the president or officer, has done in the last preceding month or quarter; and also to make a statement under oath, if required, in order to carry out the provisions of this chapter, and thereupon such agent or other person shall procure a license for such month or quarter, for the class of which such party is liable to pay. And in all cases where an under estimate has been made, the applicant shall be made to pay double license for the next month or quarter. Such license shall authorize the party obtaining the same, in his county, to transact business as provided in such license: *Provided*, That nothing in this chapter, nor in any license issued under it, shall be so construed as to authorize any person to carry on any business without procuring such additional license as may be lawfully required by laws of the United States or of any incorporated city.

SEC. 816. For the purpose of enforcing the provisions of this chapter, and to prevent the evasion of the same, all property of every kind held or used in any of the trades, occupations, or professions for which a license is required by the provisions of this chapter, shall be liable for said license, and said license is hereby made a lien on all such property, which lien shall have precedence of any other lien, claim or demand; and if any person or persons shall fail or refuse to procure the license required by this chapter, before the transaction of the business specified, it shall be the duty of the treasurer of the county to seize any of the property upon which a lien is hereby created, or any other property belonging to such person or persons, and sell the same in the manner provided for sheriffs on execution to satisfy said license and cost, and for which said treasurer shall receive a like fee as sheriffs for service of notice and sale on executions, or said treasurer may sue for and collect said license and cost by attachment, garnishment, or otherwise.

Sec. 817. Any person or persons who shall transact any business, trade, or occupation, or profession, for which a license is required by this chapter, without first obtaining the same, shall be deemed guilty of a misdemeanor, and, upon conviction before any court having competent jurisdiction, be fined in any sum not less than ten dollars nor more than one hundred dollars, and stand committed until such fine shall be satisfied; and like proceedings shall be had thereon as in cases of misdemeanor as prescribed by law.

Sec. 818. If any treasurer shall fail or refuse to enforce the provisions of this chapter as herein directed, he shall be liable, and shall pay double the amount of each and every license which he shall so fail to collect, together with all costs of suit; and it shall be the duty of the district attorney of the district in which such treasurer resides, upon complaint of any tax payer in this Territory, to prosecute such treasurer for the same.

Note.—Act May 8th, 1873, except where otherwise specially noted.

Sec. 819. All moneys collected for license taxes in the several counties of this Territory, under the provisions of any act concerning licenses now in force, or that may hereafter become a law, shall be paid into the county treasury of the county wherein the same are collected; and sixty per cent. of the whole amount so collected shall be retained in the county treasury of such county for the use of such county, and the remaining forty per cent. shall be paid over by the county treasurer to the Territorial treasurer for the use of the Territory.

Note.—Act January 9th, 1872.

CHAPTER XLI.

LIENS.

Sec. 820. *Mechanics to have liens; extent of.*
Sec. 821. *Lien of sub-contractor; notice of.*
Sec. 822. *Sub-contractor to file statement; when.*
Sec. 823. *Employer to become surety to sub-contractor; when.*
Sec. 824. *Notice may be served by sheriff.*
Sec. 825. *Time of filing statement of indebtedness by all persons other than sub-contractors.*
Sec. 826. *Recorder to keep index of liens filed.*
Sec. 827. *Liens to have priority in the order of filing by classes.*
Sec. 828. *Employer's interest in land subject to lien; building may be sold and removed.*

Sec. 829. *When lien shall attach. Purchaser of building may remove same.*
Sec. 830. *Suit may be brought in district court to enforce lien.*
Sec. 831. *Practice and pleading same as in other cases.*
Sec. 832. *All persons interested to be made parties.*
Sec. 833. *Death of parties named in preceding section; who to be made parties.*
Sec. 834. *Court shall ascertain amount of indebtedness.*
Sec. 835. *Judgment by default; when.*
Sec. 836. *Judgment where no personal service had.*
Sec. 837. *Judgment where personal service had.*
Sec. 838. *Execution to be a special fieri facias.*
Sec. 839. *When suit to be commenced.*
Sec. 840. *Who shall be included in the terms "owner" or "proprietor."*
Sec. 841. *Duty of creditors to acknowledge satisfaction of lien.*
Sec. 842. *Satisfaction to be filed with recorder.*
Sec. 843. *Creditor liable for not acknowledging satisfaction.*
Sec. 844. *Employer liable to sub-contractor for amount not paid.*
Sec. 845. *Who to be considered sub-contractors.*
Sec. 846. *Liens filed under Idaho statute, to be entitled to benefit of this act.*
Sec. 847. *Measure of damage when contract is in gold dust.*
Sec. 848. *Ranchmen and others to have lien.*

Sec. 820. Every mechanic, builder, lumberman, artisan, workman, laborer, or other person, who shall do or perform any work or labor upon, or furnish any material, machinery, or fixtures for any building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city, or town lots, or other improvements upon land, or for repairing the same, upon complying with the provisions of this chapter, shall have for his work or labor done, or material, machinery, or fixtures furnished, a lien upon such building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvements, to secure the payment of such work or labor done, or material, machinery, or fixtures furnished.

Sec. 821. Every sub-contractor wishing to avail himself of the benefits of this chapter, shall give notice to the owner or proprietor, or his agent or trustee, before or at the time he furnishes any of the things aforesaid, or performs any of the labor, of his intention to furnish or perform the same, and the probable value thereof; and if afterwards the things are furnished, or labor done, the sub-contractor shall settle with the contractor therefor, and having made the settlement in writing, the same signed by the contractor, and certified by him to be just, shall be presented to the owner or proprietor, or his agent or trustee, and left with him; and within thirty days from the time the things shall have been furnished, or the labor performed, the sub-contractor shall file with the recorder of the county in which the building, erection, or other improvement is situated, a copy of the settlement between himself and the contractor, which shall be a lien upon the building, erection, or improvement for which the things were furnished, or on which the labor was performed, and shall at the time file a correct description of the property to be charged with the lien; the correctness of all which shall be verified by affidavit.

SEC. 822. In case the contractor shall, for any reason, fail or refuse to make and sign such settlement in writing with the sub-contractor when the same is demanded, then the sub-contractor shall make a just and true statement of work and labor done, or things furnished by him, giving all credits, which he shall present to the owner or proprietor, or his agent or trustee, and shall also, within said thirty days, file a copy of the same, verified by affidavit, with the recorder of the county in which the building, erection, or other improvement is situated, together with a full and correct description of the property to be charged with the lien.

SEC. 823. The certificate of settlement made as aforesaid, or statement of the sub-contractor, shall be a justification to the employer in withholding from the contractor the amount appearing thereby to be due to the sub-contractor until he is satisfied that the same has been paid; and the employer shall become surety of the contractor to the sub-contractor for the amount due for such work and labor or things, not, however, exceeding the value thereof, as notified under section 821.

SEC. 824. The notice mentioned in the preceding sections may be served by the sheriff, or any constable of the county in which such building, erection, or other improvement is situated, and the return thereon of such sheriff or constable shall be received in evidence without further proof.

SEC. 825. It shall be the duty of every person and all persons, except as has been provided for sub-contractors, who wish to avail himself or themselves of the benefits of this chapter, to file with the recorder of the county in which the building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvements upon lands to be charged with lien, is situated, and within ninety days after the things aforesaid have been furnished, or the work or labor done, or performed, a just and true account of the amount due or owing to him after allowing all credits, and containing a correct description of the property to be charged with said lien verified by affidavit.

SEC. 826. It shall be the duty of the recorder of the county to endorse upon every account the day of its filing, and make an abstract thereof in a book by him to be kept for that purpose, and properly indexed, containing the date of its filing, the name of the person laying or imposing the lien, the amount of such lien, the name of the person against whose property the lien is filed, and the discription of the property to be charged with the same; for all of which he shall receive the sum of one dollar from the person laying or imposing the lien, which shall be taxed and collected as other costs in case there be suit thereon.

NOTE.—Sections 82 and 826 are from Act Febuary 13th, 1874.

SEC. 827. That the lien given by section 820 of this chapter shall extend to the lot or land upon which any such building, improvement, or structure to the extent of one acre, if outside any town or city; or, if within any town or city, then to the extent of the whole lot or lots upon which the same is situated, if the land belonged to the person who caused said building to be constructed, altered, or repaired; but if such person owned less than a fee-simple estate in such land, then only his interest therein is subject to such lien.

All liens for work or labor done, or material furnished, upon the same premises, which shall be filed within thirty days after the filing of the first lien on such premises, shall entitle the holder thereof to share equally, *pro rata*, according to the amount of their respective liens, in the proceeds arising from the sale of such premises upon the foreclosure of such liens. If, after the expiration of thirty days, other liens shall be filed against such premises, then all liens filed within sixty days after the filing of such subsequent lien shall be liens of the second class, and share *pro rata* in any proceeds arising from the sale of the said premises which may remain after all liens of the first class have been paid.

The liens for work or labor done, or material furnished, as specified in this chapter, shall be prior to, and have precedence over any mortgage, incumbrance, or other lien made subsequent to the commencement of work on any contract for the erection of such building or other improvement.

NOTE.—Section 827, ——, is from Act of February 16th, 1877.

SEC. 828. The entire land to the extent aforesaid, upon which any such building, erection or other improvement is situated, including as well that part of said land which is not covered with such building, erection, or other improvement, as that part thereof which is covered with the same, shall be subject to all liens created by this chapter, to the extent, and only to the extent, of all the right, title, and interest owned therein by the owner or proprietor of such building, erection, or other improvement, for whose immediate use or benefit the labor was done, or things were furnished; and when the interest owned in such land, by such owner or proprietor of such building, erection or other improvement, is only a lease-hold interest, the forfeiture of such lease for the non-payment of rent, or non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as concerns the buildings, erections, and improvements thereon put by such owner or proprietor charged with such lien, but such building, erection, or improvement may be sold to satisfy said lien, and be moved within twenty days after the sale thereof by the purchaser.

SEC. 829. The liens aforesaid, or work, shall attach to the buildings, erections, or improvements for which they were furnished, or the work was done, in preference to any prior lien or incumbrance, or mortgage upon the land upon which said buildings, erections, or improvements have been erected or put; and any person enforcing such lien may have such building, erection or improvement sold under execution, and the purchaser may remove the same within a reasonable time thereafter.

SEC. 830. Any person having a lien under or by virtue of this chapter may bring suit to enforce the same, and to obtain the benefits thereof, in the district court of the county wherein the property on which the lien is attached is situated, without regard to its amount.

SEC. 831. The pleadings, practice, process, and other proceedings in the several district courts, in cases arising under this chapter, shall be the same as in ordinary civil actions and civil proceedings in said courts, except as herein otherwise provided. The petition, among other things, shall allege the facts necessary for securing a lien under this chapter, and a description of the property charged therewith.

SEC. 832. In all suits under this chapter, the parties to the contract shall, and all other persons interested in the matter in controversy and in the property charged with the lien, may be made parties; but such as are not made parties shall not be bound by any such proceedings.

SEC. 833. In case of the death of any of the parties specified in the immediately preceding section, whether before or after the suit brought, the executor or administrator of such deceased party shall be made plaintiff or defendant, as the case may require, and it shall not be necessary to make the heirs or devisees of such deceased person parties to such suit; but if there be no executor or administrator of such deceased party, then his heirs or devisees may be made parties to such suit; and if any of said heirs or devisees are minors—under the age of twenty-one years—their guardians shall be made parties with them; but if such minors shall have no guardians, the court in which the suit is pending shall appoint guardians *ad litem*, for them, in the same manner and under the same rules and regulations as guardians *ad litem* are appointed in proceedings for partition of real estate, and the judgment and proceedings of such court in any such suit shall be as binding on such minors as if they were over the age of twenty-one years.

SEC. 834. The court shall ascertain by a fair trial, in the usual way, the amount of indebtedness for which such lien is established, and render judgment for the same, and for costs of suit.

SEC. 835. Judgment by default shall be rendered against every defendant who, after being summoned or notified according to law, shall not appear and plead or answer within the time allowed in ordinary civil actions.

SEC. 836. When the debtor has not been served with summons according to law, and has not appeared, but has been lawfully notified by publication, the judgment, if any, for the plaintiff shall be, that he recover the amount of the indebtedness found to be due, and costs of suit, to be levied out of the property charged with the lien thereof, which said property shall be correctly described in said judgment.

SEC. 837. When the debtor has been served with summons according to law, or appear to the action, the judgment, if for the plaintiff, shall be against such debtor, as in ordinary cases, with the addition that if no sufficient property of the debtor can be found to satisfy the judgment and costs of suit, then the residue thereof be levied as provided in the next preceding section.

SEC. 838. The execution to be issued shall be a special *fieri facias*, and shall be in conformity with the judgment, and such writ shall be returnable as ordinary executions; and the advertisement, sale, and conveyance of real or personal estate under the same shall be made as under ordinary executions.

SEC. 839. All suits under this chapter shall be commenced within ninety days in case of sub-contractors, and twelve months in all other cases from time of filing the account or statement as aforesaid, and not after, and be prosecuted without unnecessary delay to final judgment.

NOTE.—Last preceding section from Act of February 13th, 1874.

SEC. 840. Every person, including all *cestuis que trust*, for whose immediate use, enjoyment, or benefit, any building, erection, or improvement shall be made, shall be included by the word "owner" or "proprietor" under this chapter, not excepting such as may be minors over the age of eighteen years, or married women.

SEC. 841. Whenever any indebtedness, which is a lien upon any such real estate, erection, or building, or other improvement, shall be paid and satisfied, it shall be the duty of the creditors, if required, to go before some officer authorized to take the acknowledgment of conveyances of real estate, and acknowledge satisfaction of said lien.

SEC. 842. Such satisfaction, being acknowledged and certified, shall be filed with the recorder of the county wherein said lien is of record, who shall thereupon enter satisfaction of such lien upon the record, or the margin thereof, in the same manner as the satisfaction of a mortgage is entered, and shall be allowed the same fee therefor as is allowed for entering the satisfaction of a mortgage, to be paid by the creditor at the time the service is performed.

SEC. 843. If any creditor fail, refuse, or neglect to acknowledge satisfaction, as aforesaid, he shall be liable to any person injured to the amount of such injury, and the costs of suit.

SEC. 844. In case any sub-contractor shall not have notified the owner, proprietor, his agent or trustee, before furnishing the things aforesaid, or doing work, as provided for in section 821, but shall furnish to him the account as provided for in section 821, or the statement as provided for in section 822, and in all other respects shall comply with the provisions of this chapter, he shall have the benefit of this chapter the same as if he had given such notice, to the extent and only to the extent that such owner or proprietor can safely, with his engagements and liabilities then existing, withhold any amount by him owing to his contractor for such sub-contractor.

SEC. 845. All persons furnishing things, or doing work, as provided for by this chapter, shall be considered sub-contractors, except such as have therefor contracts directly with the owner or proprietor, his agent or trustee.

SEC. 846. Any person or persons who have heretofore done work and labor, or furnished materials, and have availed themselves of the provisions of an act of the Idaho legislature, entitled "An act for securing liens to mechanics and others," approved January 23, 1864, and has filed within the time therein prescribed, in the office of the recorder of the county, or in the county clerk's office, in which such building or superstructure is situated, of the amount due them, verified by said act, shall be entitled to all the benefits of this chapter; and all such liens so acquired, under and by virtue of the provisions of said act, shall be as effectual to all intents and purposes as if the same had accrued under and by virtue of this chapter, and the provisions of this chapter shall in all cases be applicable to the enforcement of such liens.

SEC. 847. In all cases when liens have accrued for work and labor done, or materials furnished, which were to be paid for in gold dust or other property, the current value of such gold dust or property in United States treasury notes at the time said work and labor were done, or materials furnished, shall be the true measure of damages, and the court in ascertaining the same shall have due regard to the customs of the country prevailing at the time such lien accrued, and under which such work and labor were done, or material furnished; and the court, after ascertaining the value of such gold dust or other property, shall render judgment for the value thereof, and enforce the judgment of the same as required by this chapter.

SEC. 848. That any ranchman, farmer, agistor, or herder of cattle, tavern-keeper, or livery stable keeper, to whom any horses mules, asses, cattle, or sheep shall be entrusted, and a contract for their keeping be entered into between the parties for the purpose of feeding, herding, pasturing, or ranching, shall have a lien upon said horses, mules, asses, cattle, or sheep, for the amount that may be due for such feeding, herding pasturing, or ranching, and shall be authorized to retain possession of such horses, mules, asses, cattle, or sheep until the said amount is paid: *Provided*, That the provisions of this section shall not be construed to apply to stolen stock.

NOTE.—Foregoing chapter is from Act January 12th, 1872, except where otherwise noted.

CHAPTER XLII.

LORD'S DAY.

Sec. 849. *Unlawful to keep open play houses, etc., on Lord's Day.*
Sec. 850. *Unlawful to keep open any gambling house.*
Sec. 851. *Violation of this act a misdemeanor.*
Sec. 852. *Justices to have jurisdiction under this act.*
Sec. 853. *Fines to go to school fund.*

SEC. 849. Hereafter it shall be unlawful for any person or persons to keep open any play house, theater, dance house, hurdy-gurdy house, prize ring, or race grounds on the first day of the week, commonly called the Lord's Day.

SEC. 850. Hereafter it shall be unlawful for any person or persons to keep open any house or other habitation wherein any game of chance is played, or open any banking game at cards on the first day of the week, commonly called the Lord's Day.

SEC. 851. If any person or persons shall violate the provisions of this chapter, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any court having competent jurisdiction, shall be fined in any sum not less than ten dollars, nor more than one hundred dollars, or be imprisoned in the county jail not less than one nor more than thirty days for such offence, or by both such fine and imprisonment, and shall be adjudged to pay all costs of such prosecution.

SEC. 852. Justices of the peace shall have jurisdiction in all cases arising under the provisions of this chapter.

SEC. 853. All fines collected under this chapter shall be paid into the county treasury of the county where such conviction was had, and shall be for the benefit of the common schools of said county.

CHAPTER XLIII.

MARRIAGE.

Sec. 854. *Marriage declared a civil contract; consent necessary.*
Sec. 855. *Who may not marry.*
Sec. 856. *Who may solemnize marriage.*
Sec. 857. *Persons solemnizing marriage to make certificate and file with county recorder.*
Sec. 858. *Form of certificate.*
Sec. 859. *Certificates to be filed and recorded.*
Sec. 860. *Penalty for not delivering certificate to recorder.*
Sec. 861. *Penalty for making false certificate or marrying without authority.*
Sec. 862. *Marriage not deemed void because person solemnizing had no authority.*
Sec. 863. *Certificate and record presumptive evidence of marriage.*
Sec. 864. *Children legitimatized by marriage.*
Sec. 865. *All fines under this act to be paid to school fund.*

SEC. 854. Marriage, as far as its validity is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential, and the parties shall be of the age of majority.

SEC. 855. No marriage shall be contracted while either of the parties shall have a husband or wife living, nor between parties who are nearer of kin than second cousins, computing by the rules of civil law, whether by the half or whole blood.

SEC. 856. That marriages may be solemnized by any judge of a court of record, by any justice of the peace in the county or judicial district in and for which he is appointed or elected, by the governor of this Territory, or by a minister of the gospel who may be settled over any congregation in this Territory as minister thereof.

SEC. 857. That every person solemnizing marriage shall make a record thereof, and, within three months after such marriage, shall make out and deliver to the recorder of deeds of the county in which the marriage took place, a certificate, under his hand, of the following form, and deliver a copy to either or both of the parties, if requested.

SEC. 858. The certificate shall be in the following form:

TERRITORY OF MONTANA, } ss.
County of ——. }

This is to certify that the undersigned, a justice of the peace of said county (minister of the gospel, judge, etc., as the case may be,) did, on the —— day of ———, A. D., 18—, join in lawful wedlock T—— B——— and M—— S——— with their mutual consent, in presence of P—— L——— and M ———M————, witnesses.

SEC. 859. All such certificates shall be filed and recorded by the said recorder in a book to be kept by him for that purpose, and he shall receive a fee of one dollar from the person solemnizing said marriage, who shall be entitled to receive the same from the parties before the marriage.

SEC. 860. That every person solemnizing marriages, who shall neglect to make and deliver to the recorder a certificate thereof within the time above specified, shall forfeit for such neglect a sum not less than twenty nor more than fifty dollars; and every recorder who shall neglect to record such certificate, so delivered, shall forfeit the like penalty.

SEC. 861. That every person who shall willfully make and deliver a false certificate of marriage or pretended marriage, or undertake to join others in marriage, knowing he is not lawfully authorized so to do, or knowing any legal impediment to the proposed marriage, he shall, on conviction in any court of competent jurisdiction, be fined in a sum not exceeding five hundred dollars, and be imprisoned in the Territorial prison until such fine is paid.

SEC. 862. No marriage solemnized before any person professing to be a judge or justice or minister, shall be deemed or regarded void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

SEC. 863. The original certificate and record of marriage made by the judge, justice, or minister, as prescribed in this chapter, and the record therof by the recorder of the county, or a copy of such record, duly certified by the recorder, shall be received by all courts, and in all places, as presumptive evidence of the fact of such marriage.

SEC. 864. Illegitimate children shall become legitimatized by the subsequent marriage of their parents with each other.

SEC. 865. All fines arising under this chapter, in consequence of a breach of this chapter, shall be paid into the county treasury for the use of common schools; and said fines shall be recovered by a civil action, to be brought by any person aggrieved, or by the county treasurer.

NOTE.—Act January 12th, 1872.

CHAPTER XLIV.

MARRIED WOMEN.

ARTICLE I.

PROPERTY EXEMPT FROM HUSBAND'S DEBTS.

SEC. 866. That the property owned by any married woman before her marriage, and that which she may acquire after her marriage, by descent, gift, grant, devise, or otherwise, and the increase, use, and profits thereof, shall be exempt from all debts and liabilities of the husband, unless for necessary articles procured for the use and benefit of herself and her children under the age of eighteen years: *Provided, however,* That the provisions of this article shall extend only to such property as shall be mentioned in a list of the property of such married woman as is on record in the office of the register of deeds of the county in which such married woman resides.

NOTE.—Act January 12th, 1872.

ARTICLE II.

MARRIED WOMEN AS SOLE TRADERS.

Sec. 867. *Married women may do business in their own names.*
Sec. 868. *Declaration acknowledged to be recorded.*
Sec. 869. *Rights and liabilities after such record.*
Sec. 870. *Responsible for maintenance of children.*
Sec. 871. *Statement under oath if original investment exceed ten thousand dollars.*
Sec. 872. *Husband not responsible for debts.*

SEC. 867. Married women shall have the right to carry on and transact business under their own name, and on their own account, by complying with the regulations prescribed in this article.

SEC. 868. Any married woman residing within this Territory, desirous to avail herself of the benefit of this article, shall make her declaration before any person authorized to take acknowledgment of conveyances that she intends to carry on business in her own name and on her own account, specifically setting forth the nature of the business she intends to carry on and transact, and from that date shall be individually responsible in her own name for all the debts contracted by her by virtue of said business, the declaration to be recorded in the office of the county recorder of the county in which said business is to be transacted and carried on.

SEC. 869. After such declaration has been duly recorded as heretofore provided, the person so making her declaration as aforesaid shall be entitled to carry on her business in her own name, and the property, revenue, money, and debts and credits shall belong exclusively to said married woman, and shall not be liable for any of the debts of her husband, and she shall be allowed all the privileges and be liable for all the legal processes now or hereafter provided by law against debtors and creditors.

SEC. 870. Any married woman availing herself of the benefit of this article shall be responsible for the maintenance of her children.

SEC. 871. No married woman shall commence or carry on business on her own account under the provisions of this article, when the amount originally invested in said business exceeds the sum of ten thousand dollars, unless the declaration provided for in section 868 contain a statement, under oath, that the surplus of money above ten thousand dollars invested in said business did not come from any funds belonging to her husband.

SEC. 872. The husband of the wife availing herself of the benefit of this article shall not be responsible for any debts contracted by her in the course of said business, without the special consent of said husband, given in writing, nor shall the separate property of said husband be taken on execution for any debts contracted by her.

NOTE.—Act February 4th, 1874.

CHAPTER XLV.

MINES.

ARTICLE I.

QUARTZ LODES.

Sec. 873. *Discoverer to record declaratory statement.*
Sec. 874. *What to entitle party to record.*
Sec. 875. *Extent of location.*
Sec. 876. *Extent of lodes discovered and recorded prior to passage.*
Sec. 877. *Penalty for removing stakes or destroying notice.*

Sec. 873. Any person or persons who shall hereafter discover any mining claim upon any vein or lode bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, shall, within twenty days thereafter, make and file for record in the office of the recorder of the county in which said discovery is made, a declaratory statement thereof, in writing, on oath, before some person authorized by law to administer oaths, describing such claim in the manner provided by the laws of the United States.

Sec. 874. That in order to entitle any person or persons to record in the county recorder's office of the proper county, any lead, lode, or ledge, there shall first be discovered on said lode, lead, or ledge, a vein or crevice of quartz, or ore with at least one well defined wall.

Sec. 875. Claims on any lead, lode, or ledge, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, hereafter discovered, shall consist of not more than fifteen hundred linear feet along the lead, lode, or ledge, and not more than three hundred feet, and not less than twenty-five feet on each side from the centre of said lead, lode, or ledge, for working purposes: *Provided*, That the provisions of this article shall not be so construed as to include claims recorded prior to the passage of this article.

Sec. 876. All lode claims heretofore discovered and recorded pursuant to the law, and the possessory title to which shall have been preserved according to law, shall entitle the owner or owners thereof to surface ground along the course of the vein three hundred feet on each side from the centre of said vein: *Provided*, That such width shall not be permitted to interfere with any vested or possessory rights of any person or persons, corporation or corporations, which have intervened and have been preserved to the time of the taking effect of this article, but parties desiring to avail themselves hereof shall so signify by a record which shall show that they so elect, or if they so desire, they may limit the surface ground on each side of the centre of the vein to any width not less than twenty-five feet.

Sec. 877. Any person who shall remove any stake or monument placed on any mining claim, or who shall obliterate, deface, or destroy any notice placed thereon, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year, or both such fine and imprisonment in the discretion of the court.

Note.—Act February 11th, 1876.

ARTICLE II.

MINING TUNNELS.

Sec. 878. *Location of tunnel to be recorded.*
Sec. 879. *Person pre-empting tunnel to have three hundred feet on each side.*
Sec. 880. *Right of way through other claims.*
Sec. 881. *To run one hundred feet on tunnel within one year.*
Sec. 882. *Pre-emptor's right for ore yard.*

Sec. 878. That if any person or persons shall locate a tunnel claim for the purpose of discovery and mining, he or she shall record the same, specifying the place of commencement and the course thereof, with the names of the parties interested therein.

Sec. 879. That any person or persons so pre-empting any tunnel have the exclusive right to three hundred feet on each side from the centre of said tunnel on any and all lodes that he or they may discover in the course of said tunnel: *Provided,* That none of said lodes, leads, or ledges were discovered and recorded previous to the pre-emption of said tunnel, in accordance with an act passed by the legislative assembly of the Territory of Montana, entitled, "An act relating to the discovery of gold and silver quartz leads, lodes, or ledges, and the manner of their location."

Sec. 880. That any person or persons who may work any tunnel or tunnels shall have the right of way through any and all lodes, leads, or ledges that may lie in the course of any of said tunnels: *Provided,* That all quartz ore or mineral taken from said tunnel from leads, lodes, or ledges belonging to parties other than the said tunnel company, shall be deposited on the surface by said tunnel company and belong to the original occupants or owners of said lead, lode or ledge.

Sec. 881. That in order to hold any tunnel claims to the use of themselves, their heirs and assigns, they shall, before the expiration of one year from the date of pre-emption, run to the distance or depth of one hundred feet on said tunnel.

Sec. 882. That any person or persons who shall pre-empt any tunnel claim shall be entitled to three hundred feet on each side of the mouth of said tunnel for the purpose of a quartz or ore yard.

Note.—Act January 12th, 1872.

ARTICLE III.

MINING DISTRICT RECORDS.

Sec. 883. *All mining district records to become county records on being deposited in recorder's office.*
Sec. 884. *Duty of district recorder to deposit records in county recorder's office.*
Sec. 885. *Penalty for refusal of county recorder to receive records.*

Sec. 883. That all mining district records, of all lead, lode, ledge, ranche, water or mill claims, that are now or shall be deposited within the next ninety days hereafter succeeding the passage of this article, in their respective county recorder's office, shall become a part and parcel of said county records, and shall be evidence in any court or courts of competent jurisdiction, and have the same force and effect as if such records had been recorded in the county recorder's office, when first filed with the mining district records.

SEC. 884. That it shall be the duty of all mining district recorders to file any and all records pertaining to all lead, lode, ledge, ranche, water and mill claims, in their respective county recorder's office, and, upon failure to do so, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

SEC. 885. That it shall be the duty of the county recorder, when any such district records are tendered him, to receive the same, and place them on file in his office, for which he shall receive a fee of fifty cents, to be paid by the district recorder; and upon his refusal to receive said district records, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

NOTE.—Act January 12th, 1872.

ARTICLE IV.

RIGHTS OF WAY FOR THE DEVELOPMENT OF MINES.

Sec. 886. *Right of way over and across the lands of others.*
Sec. 887. *For convenience of working owner of mining claim to have right of way for ditch, tunnel, etc.*
Sec. 888. *Petition to judge for right of way.*
Sec. 889. *Citation to require appearance of parties.*
Sec. 890. *Hearing of petition and order awarding right of way; appointment of commissioners to assess damages.*
Sec. 891. *Commissioners to examine and report.*
Sec. 892. *Report may be set aside and other commissioners appointed.*
Sec. 893. *Upon payment of damages awarded, petitioners entitled to right of way.*
Sec. 894. *Appeals from assessment of damages.*
Sec. 895. *Trial of appeal.*
Sec. 896. *Rights of appellee upon giving bond.*
Sec. 897. *When appellee to pay costs.*
Sec. 898. *Costs on appeal; tender of payment of damages.*

WHEREAS, The congress of the United States by an act approved July 26, 1866, and an act amendatory thereto, approved July 9, 1870, has provided that the local legislatures of the several States and Territories may provide rules for working mines, involving easements, drainage, and other necessary means to complete development of mines upon which patents shall be granted by the United States, in the absence of necessary legislation by congress. And, whereas, there has been no legislation by congress upon this subject; therefore:

Be it enacted by the legislative assembly of the Territory of Montana:

SEC. 886. The proprietor, owner or owners of mining claims, whether patented under the laws of the United States, or held under the local laws and customs of this Territory, shall have a right of way for ingress and egress, for the necessary purposes, over and across the lands or mining claims (patented or otherwise) of others as hereinafter prescribed.

SEC. 887. Whenever any such mine or mining claim shall be so situated that it can not be conveniently worked without a road thereto, or a ditch to convey the water thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or a tunnel thereto, which road, ditch, cut, flume, shaft, or tunnel shall necessarily pass over, under, through, or across any lands or mining claim owned or occupied by others, either under a patent from the United States or otherwise, then shall such first mentioned owner or owners be entitled to a right of way for such road, ditch, cut, flume, shaft, or tunnel over, under, through and across such other lands or mining claims, upon compliance with the provisions of this article.

SEC. 888. Whenever the owner or owners of any mine or mining claim shall desire to work the same, and it is necessary to enable him or them to do so successfully and conveniently, that he or they shall have a right of way for any of the purposes mentioned in the foregoing sections; and, if such right of way shall not have been acquired by agreement between him or them, and the claimants or owners of the land or claims, over, under, across, and upon which he or they seek to establish such right of way, it shall be lawful for him or them to present to the judge of the district court of the Territory of Montana, within and for the county in which such right of way, or some part thereof, sought to be enforced, is situated, or to which such county is attached for judicial purposes, a petition praying that such right of way be awarded to him or them. Such petition shall be verified and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim or claims and the lands to be affected by such right or privilege, with the names of the occupants or owners thereof. It may, also, set forth any tender or offer hereinafter mentioned, and shall demand the relief sought.

SEC. 889. Upon the receipt of such petition, and filing thereof with the clerk of such court, the judge shall direct a citation to issue under the seal of such court, to the owners named in the petition of mining claims and lands to be affected by the proceedings, requiring them, and each of them, to appear before the judge on a day therein named, which shall not be less than ten days from the service thereof, and show cause why such right of way should not be allowed as prayed for; such citation shall be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law.

SEC. 890. Upon the return day of the citation, or upon any day to which the hearing shall be adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties, and, if upon such hearing he is satisfied that the claims of the petitioner can only be conveniently worked by means of the privilege prayed for, he shall make an order, adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners, who shall be disinterested parties and residents of the county, to assess the damages resulting to the lands or claims affected by such order.

Sec. 891. The commissioners, so appointed, shall be sworn or affirmed to faithfully and impartially discharge their duties, and shall proceed, without unreasonable delay, to examine the premises, and shall assess the damages resulting from such right or privilege prayed for, and report the amount of the same to the judge appointing them, and, if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of damages to each company or person.

Sec. 892. For good cause shown the judge may set aside the report of such commissioners, and appoint three other commissioners, whose duties shall be the same as above mentioned.

Sec. 893. Upon the payment of the sum assessed as damages, as aforesaid, to the persons to whom it shall be awarded, or a tender thereof to them; then the person or persons petitioning, as aforesaid, shall be entitled to the right of way as prayed for in their or his petition, and may immediately proceed to occupy the same, and to erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right of way so awarded.

Sec. 894. Appeals from the assessment of damages made by the commissioners may be made and prosecuted in the proper district court by any party interested, at any time within ten days after the filing of the report of the commissioners, and a written notice of such appeal shall be served upon the appellee in the same manner as summonses are served in civil actions. The appellant shall file with the clerk of the court to which the appeal is made, a bond with sureties to be approved by the clerk, in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant shall pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause.

Sec. 895. Appeals shall bring before the appellate court only the propriety of the amount of damages, and may be tried by the court or before a jury as other cases in the court.

Sec. 896. The prosecution of any appeal shall not hinder, delay, or prevent the appellee from exercising all the rights and privileges mentioned in section 893 of this article: *Provided,* That the appellee shall file, with the clerk of the court in which the appeal is pending, a bond with sufficient sureties, to be approved by the clerk, in double the amount of the assessment appealed from, conditioned that the appellee shall pay to the appellant whatever amount he may recover in the action.

Sec. 897. If the appellant recover fifty dollars more damages than the commissioners shall have awarded, or the appellee shall offer to allow judgment against him to be taken, the appellee shall pay the costs of the appeal, otherwise the appellant shall pay such costs.

Note.—Sections 886 to 897, both inclusive, are from Act of January 4th, 1872.

SEC. 898. The costs and expenses of proceedings under the provisions of this article, except as herein otherwise provided, shall be paid by the party making the application: *Provided, however,* That if the applicant shall, before the commencement of such proceedings, have tendered to the parties owning or occupying the lands or mining claims a sum equal to or more than the amount of damages recovered by the defendant or defendants, then all of the costs and expenses shall be paid by the party or parties owning the lands or mining claims affected by such right of way, and who appealed and resisted the claim of the applicants thereto.

NOTE.—Section 898 from Act of February 13th, 18 4.

CHAPTER XLVI.

MORTGAGES—CHATTEL.

Sec. 899. *Requisites of validity of chattel mortgages.*
Sec. 900. *By whom acknowledgment taken.*
Sec. 901. *When chattels, etc., may be left in possession of mortgagor.*
Sec. 902. *Certified copy may be read in evidence when original lost, etc.*
Sec. 903. *Fees for recording and copying.*
Sec. 904. *Penalty for selling mortgaged property without notice.*
Sec. 905. *Act to extend to bills of sale and trust deeds.*
Sec. 906. *Time allowed to record mortgage.*
Sec. 907. *Actions for foreclosure of mortgages; how conducted.*
Sec. 908. *Penalty if mortgagor dispose of the mortgaged property.*

SEC. 899. No mortgage on goods, chattels, or personal property, shall be valid as against the rights and interests of any third person, unless possession of such personal property shall be delivered to remain with the mortgagee, or the said mortgage acknowledged and recorded as hereinafter directed.

SEC. 900. Any mortgagor of goods, chattels, or personal property, may acknowledge such mortgage before any justice of the peace or other officer authorized to take acknowledgment of deeds of the county in which he may reside.

SEC. 901. Any mortgage of goods, chattels, or personal property, so acknowledged shall be admitted to record by the recorder of the county in which the mortgagor shall reside at the time when the same is made, acknowledged, or recorded, and shall thereupon, if *bona fide*, be good and valid from the time it is so recorded for a space of time not exceeding one year, notwithstanding the property mortgaged or conveyed by deed of trust may be left in possession of the mortgagor: *Provided,* That such conveyance shall provide for the property so to remain with the mortgagor.

SEC. 902. A copy of such mortgage, made, acknowledged, and recorded as aforesaid, certified by the proper recorder, from the proper record, may be read in evidence in any court of this Territory without any further proofs of the execution of the original, if said original be lost or out of the power of the person wishing to use it.

SEC. 903. For recording each mortgage the recorder recording the same shall receive twenty-five cents for every one hundred words, and for copies thereof the same compensation only.

SEC. 904. Any person having conveyed goods, chattels, or any article of personal property, to another, by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said goods, chattels, or personal property, or any part thereof, to a third person, for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to the purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof, or if the amount claimed do not exceed one hundred dollars, before any justice of the peace.

SEC. 905. The provisions of this chapter shall be deemed to extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property, as shall have the effect of a mortgage or lien upon such property.

SEC. 906. The mortgagee, in all mortgages made under this chapter shall be allowed one day for every twenty miles of the distance between his residence and the county recorder's office where such mortgage ought by law to be recorded to conform with the provisions of this chapter, before any attachment or execution shall be valid, made by the creditor or the mortgagor.

SEC. 907. All actions for the foreclosure of chattel mortgages, or enforcement of any lien against personal property of whatever nature, shall be commenced and conducted in the same manner as provided in the Civil Practice Act for foreclosure of mortgages and liens against real property.

NOTE.—The preceding sections of this chapter are from Act of January 12th, 1872.

SEC. 908. That any mortgagor, or agent, servant, or employee of any mortgagor of personal property, who shall, during the time such mortgage remains in force and virtue, destroy, conceal, sell, or otherwise dispose of the property mortgaged, or who shall remove said property from the county in which said mortgage is recorded, without the written consent of the mortgagee, or assignee of the mortgagee, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days, nor more than six months, or by both such fine and imprisonment, at the discretion of the court.

NOTE.—Act of February 11th, 1876.

CHAPTER XLVII.

NOTARIES PUBLIC.

Sec. 909. *Appointment and term of office.*
Sec. 910. *Power of notaries.*
Sec. 911. *To keep a record.*
Sec. 912. *Credit and faith of records.*
Sec. 913. *Seal and its inscription.*

Sec. 914. *Power to administer oaths and take acknowledgments.*
Sec. 915. *On removal or resignation to deposit record with county clerk.*
Sec. 916. *Removing residence equivalent to resignation.*
Sec. 917. *Duties of county clerk respecting notary's records.*
Sec. 918. *Official bond.*
Sec. 919. *Misdemeanors in office.*
Sec. 920. *Effect of demand of payment by notary and refusal.*
Sec. 921. *Extent of jurisdiction of prior appointees.*
Sec. 922. *When signature without seal sufficient.*
Sec. 923. *Protest of notary prima facie evidence of facts certified.*
Sec. 924. *Power to compel attendance of witnesses.*
Sec. 925. *Who may administer official oath to a notary.*

Sec. 909. The governor shall nominate, and by and with the consent of the legislative council, may appoint one or more persons as notaries public for the Territory of Montana, for the term of three years, unless sooner removed by the governor.

Sec. 910. Each notary is invested with the power, and shall perform the duties which pertain to that office, by the custom and law of merchants.

Sec. 911. Every notary public is required to keep a true record of all notices given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with a copy of the instrument in relation to which the notice is served, and of the notice itself.

Sec. 912. Such records, and copies of them, authenticated by the hand and seal of the notary, his protests, and all his official acts as notary, and his seal, shall receive such credit and faith as they are entitled to by the law and custom of merchants.

Sec. 913. Each notary public is required to have a seal, on which are to be engraved the words "notarial seal," and "Montana," with his surname at length, and at least the initials of his christian name.

Sec. 914. Notaries public are empowered to administer oaths, and to take acknowledgments and proof of deeds, required or permitted by the law of this Territory to be recorded or acknowledged.

Sec. 915. It shall be the duty of every notary public, on his resignation or removal from office, and in case of his death, of his legal representative, to forthwith deposit the record, named in section 911 of this chapter, in the office of the clerk of the district court of the county in which he was resident, and on failure to do so, the person so offending shall be liable in damages to any person injured thereby.

Sec. 916. If a notary removes his residence from the Territory, such removal shall be taken as his resignation.

Sec. 917. It is the duty of each clerk aforesaid, to receive and safely keep all such records and papers of the notary in the case above named, and to give attested copies of them under the seal of his court, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

Sec. 918. Every applicant for the commission of notary public shall give bond to the Territory of Montana in the penal sum of one thousand dollars, with two good and sufficient sureties, to be approved by the clerk of the county in which said applicant resides, conditioned for the true and faithful performance of the duties of his office; and upon the filing of such bond in the office of the governor of the Territory of Montana, the said governor may issue to said applicant a commission as notary public, for which commission a fee of one dollar shall be paid into the Territorial treasury: *Provided*, That when the applicant resides in an unorganized county, his bond shall be approved by the clerk of the county to which it is attached for judicial purposes.

NOTE.—Act February 9th, 1877.

SEC. 919. Any notary public exercising the duties of his office after the expiration of his commission, or when otherwise disqualified, or appending his official signature to documents when the parties have not appeared before him, shall be guilty of a misdemeanor, and be subject to a fine of one hundred dollars for each offense, to be recovered before any court having competent jurisdiction, and shall also be removed from office by the governor.

SEC. 920. That in case of a demand of payment of any promissory note, bill of exchange, or other commercial paper, by a notary public, and a refusal by the maker, drawer, or acceptor, as the case may be, the notary making said demand may inform the indorser, or any party to be charged, if in the same town or township, by notice deposited in the nearest post office to the party to be charged, on the day of demand, and no other notice shall be necessary to charge said party.

SEC. 921. Every notary public whose commission is unexpired at the date of the passage of this chapter, shall be empowered to act as notary for the entire Territory of Montana, as fully as though he had been commissioned under this chapter.

SEC. 922. It shall be sufficient for any duly qualified notary public to certify on oath or affidavit, to be used in this Territory, in any of the courts, or in any manner whatever, to append his signature to the jurat, and add thereto the words notary public, and such subscription shall be sufficient without the impression of his seal, or other or further addition.

SEC. 923. The instrument of protest of any notary public appointed and qualified under the laws of this Territory, or the laws of any other State or Territory in the United States, accompanying any bill of exchange or promissory note which has been protested by such notary for non-acceptance or non-payment, shall be received in all the courts of this Territory as *prima facie* evidence of the facts therein certified, but any party may contradict by other evidence any certificate.

SEC. 924. In taking depositions he shall have the same power to compel the attendance of witnesses for refusing to testify, which may be vested by law in justices of the peace, and all sheriffs and constables are required to serve and return all processes issued by such notaries, in taking depositions.

SEC. 925. That the governor, secretary, chief justice, or any associate justice of the Territory, or the clerk or deputy clerk, of any district court, under his hand and the seal of said court, or the county clerk and recorder, or his deputy, under his hand and seal of the county, or the clerk of the supreme court, are hereby authorized to administer oaths of office to notaries public; and all oaths of office heretofore administered to notaries public by an officer of the Territory authorized to administer oaths, or any officer of any county, or other municipality therein, is hereby declared valid to all intents and purposes whatsoever.

NOTE.—Act February 13th, 1879. The other sections of preceding chapter, except where otherwise noted, are from act February 8th, 1876.

CHAPTER XLVIII.

OFFICES AND OFFICERS.

ARTICLE I.

TO PREVENT OFFICERS FROM DEALING IN CERTAIN SECURITIES.

Sec. 926. *Certain officers prohibited from dealing in county or Territorial scrip, etc.*
Sec. 927. *Prohibited from purchasing or dealing in certain evidences of indebtedness.*
Sec. 928. *Treasurer shall refuse to redeem warrants; when.*
Sec. 929. *Transfer of individual certificates of indebtedness of officers, legal.*
Sec. 930. *Duty of officers to prosecute under the provisions of this act.*
Sec. 931. *Penalty for violation of provisions of this act.*
Sec. 932. *Fines for benefit of school fund.*

SEC. 926. The Territorial treasurer and auditor, and the several district, county, city, or town corporation officers in the Territory, are hereby expressly prohibited from purchasing or selling, directly or indirectly, or in any manner receiving to their use and benefit, or to the use and benefit of any person or persons whatever, any Territory, county, or town, or city warrants, scrip, orders, demands, claim, or claims, or other evidence of indebtedness against the Territory, or county, or any city or town thereof.

SEC. 927. The Territorial treasurer and auditor, and all county, city, or town corporation officers, are prohibited from purchasing, or being interested in, or receiving, or selling, or transferring, or causing to be purchased, received, sold, or transferred, either in person or by or through the agency, or means of any person or persons whatever, any interest, claim, demand, or other evidence of indebtedness against the Territory, or any county, city, or town corporation thereof, either directly or indirectly; nor shall any clerk or employee of any such officer or officers, nor the commissioners employed or to be employed to fund any county, city, or town corporation indebtedness, be allowed to make any purchase, sale, or transfer, or bargain in any manner for any Territory, county, city, or town corporation indebtedness, be allowed to make any such purchase, sale, or transfer, or bargain in any way or manner for any Territory, county, city, or town corporation warrants, scrip, demands, or other evidences of indebtedness, against the Territory, or any county, city, or town corporation thereof.

SEC. 928. It shall be the duty of the Territorial treasurer, and the several county, city, or town corporation treasurers of the Territory, to refuse to redeem any warrants against the Territory, or any county, city, or town corporation thereof, when it shall come to their knowledge that such warrants, scrip, or other evidences of indebtedness have been purchased, sold, received, or transferred in violation of the provisions of this article.

SEC. 929. All public officers, herein referred to, shall have the right to sell or transfer any evidences of public indebtedness which may be issued according to law, and held by such officers for services rendered by them to the Territory, county, or town corporation, legally and justly due.

SEC. 930. It shall be the duty of any officer charged with the disbursement of any public moneys, or any evidences of public indebtedness, when he shall be informed by affidavit of the violation of any of the provisions of this article, by any officer, or any agent or employee of said officer, whose account is to be settled, audited, or paid by him, to withhold any settlement or payment of the same, and to cause said officer, or any agent or employee of said officer, to be prosecuted for a felony, and, on conviction of any officer, or any agent or employee of said officer, guilty of any violation of the provisions of this article, he shall be punished by a fine of not less than five hundred dollars, and shall be imprisoned in the Territorial prison not less than two months. Such conviction shall operate as forfeiture of office, and the party convicted shall forever be disqualified from holding any office of trust or profit in this Territory. Any person giving information which may lead to the conviction of any person, under the provisions of this article, shall be entitled to one-fourth of any fine assessed upon and collected from any such officer, or agent or employee of said officer. The balance of said fine shall be paid into the county treasury of the several counties.

SEC. 931. Any officer, or agent or employee of any officer, who shall be guilty of any violation of any of the provisions of this article shall, on conviction, be punished by a fine of not less than five hundred dollars, and shall be imprisoned in the Territorial prison not less than two months. Such conviction shall operate as a forfeiture of office; and it shall be, and is hereby made, the duty of all judges in this Territory to give this article specially in charge to the grand jurors at each term of their respective courts, and also to all trial jurors impannelled for the trial of any of the officers hereinbefore mentioned in this article.

SEC. 932. That all fines collected under and required by the provisions of this article to be paid into the county treasuries, shall be so paid in for the benefit of the common school fund.

NOTE.—Act January 12th, 1872.

ARTICLE II.

OFFICIAL BONDS.

Sec. 933. *Territorial officers to record bond with secretary.*
Sec. 934. *County officers to record bond with county recorder.*

SEC. 933. Each Territorial officer shall, after the approval of his official bond, and before the same is filed, have such bond recorded in the office of the secretary of the Territory, and a certified copy thereof, under the hand and seal of the secretary, shall be evidence in any court of this Territory, in case of the loss or destruction of such bond.

SEC. 934. Each county officer shall, after the approval of his official bond and before the same is filed, have such bond recorded in the office of the recorder of deeds of the county for which he shall have been elected, and a certified copy thereof, under the hand and seal of such recorder, shall be evidence in any court of this Territory, in case of the loss or destruction of such bond.

NOTE.—Act May 6th, 1873.

ARTICLE III.

OFFICERS OF THE TERRITORY AND COUNTY, AND OF THE FILLING OF VACANCIES.

Sec. 935. *What officers elected or appointed.*
Sec. 936. *How vacancies of county offices filled.*
Sec. 937. *How vacancy in Territorial office filled.*
Sec. 938. *Appointed officers to take oath and give bond.*
Sec. 939. *Requisites of oath.*
Sec. 940. *Superintendent of public instruction; bond.*
Sec. 941. *Predecessors of Territorial officers to deliver books, etc., to successors.*
Sec. 942. *Compensation of Territorial officers appointed without consent of council.*

SEC. 935. There shall be elected or appointed in the Territory of Montana, the following officers, to-wit:

First. One delegate to congress.
Second. Members of the council of the legislative assembly.
Third. Members of the house of the legislative assembly.
Fourth. One Territorial treasurer.
Fifth. One Territorial auditor who shall be *ex-officio* librarian.
Sixth. One superintendent of public instruction.
Seventh. One district attorney for each judicial district.

SEC. 936. Whenever any vacancy shall occur in any county or precinct office, except county commissioners, the county commissioners of the county where such vacancy occurs shall appoint some suitable person to perform the duties thereof, until the next general election.

SEC. 937. Whenever a vacancy shall occur at any time in the office of Territorial treasurer, auditor, superintendent of public instruction, or district attorney, the governor, by and with the advice and consent of the legislative council, shall appoint some suitable person to perform the duties of such office, and when a vacancy shall occur in the office of county commissioner, the probate judge shall appoint some suitable person to perform the duties of such office; such officers, so appointed, shall hold their respective offices until the general election next following such appointment.

SEC. 938. Every person appointed in pursuance of the last two sections of this article shall take the oath and file a bond as prescribed by law, and faithfully perform the duties of their respective offices until their successors are elected and qualified.

SEC. 939. That the Territorial auditor, treasurer, and superintendent of public instruction, before entering upon the duties of their respective offices, shall be required to take an oath to support the Constitution of the United States, the organic act of Montana Territory; and to faithfully discharge the duties of their respective offices.

SEC. 940. That the superintendent of public instruction shall be required to give bond, with two or more sufficient sureties, in the sum of twenty thousand dollars, to be approved of by the secretary of the Territory, which bond may be increased from time to time, or new or additional sureties may at any time be required by the secretary or acting secretary of the Territory, or by the legislative assembly thereof.

SEC. 941. Whenever the Territorial auditor, treasurer, and superintendent of public instruction shall have filed their bond and taken the oath according to law, and shall have received their respective commissions, it shall be the duty and it is hereby required that their predecessors in office shall, without unnecessary delay, deliver over to their successors thus qualified all books, papers, accounts, and property belonging to said office, and in case of refusal shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, in any court of competent jurisdiction, be fined in a sum not less than five hundred nor more than two thousand dollars, and be imprisoned in the county jail for the term of six months.

NOTE.—Act of January 12th, 1872.

SEC. 942. No Territorial officer shall be entitled to have or receive any salary whatever until the legislative council shall have advised and consented to his appointment, if said officer be appointed to fill a vacancy which existed at the close of a session of the legislative council.

NOTE.—Last preceding section is from Act of February 20th, 1879.

CHAPTER XLIX.

PARTNERSHIP.

Sec. 943. *Limited partnerships; how formed.*
Sec. 944. *Of whom said partnership may consist.*
Sec. 945. *Certificate; what to contain.*
Sec. 946. *How certificate to be signed and acknowledged.*
Sec. 947. *New certificate upon renewal of partnership.*
Sec. 948. *Business conducted in name of general partners.*
Sec. 949. *Capital stock not to be withdrawn; liability of special partners.*
Sec. 950. *Assignment for benefit of creditors; what to provide.*
Sec. 951. *When assent of creditors presumed; publication of notice of assignment.*
Sec. 952. *When suit to be brought by or against general partners.*
Sec. 953. *Record of notice of dissolution of partnership.*
Sec. 954. *Limited partners liable generally, except as herein provided.*

SEC. 943. Limited partnership, for the transaction of mercantile, mechanical, mining, or manufacturing business, within this Territory may be formed by two or more persons, upon the terms and subject to the conditions and liabilities prescribed in this chapter; but nothing contained in this act shall authorize such partnership for the purpose of banking or insurance.

Sec. 944. The said partnership shall consist of two or more persons, who shall be called general partners, who shall jointly and severally be responsible as general partners are by law, and two or more persons who shall contribute to the common stock a specific sum in actual cash payment as capital, who shall be called special partners, and who shall not personally be liable for any debt of the partnership, except in the cases hereinafter mentioned.

Sec. 945. The persons forming such partnership shall make, and severally sign, a certificate which shall contain the name of the firm under which such partnership is to be conducted, the name and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the capital stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate.

Sec. 946. No such partnership shall be deemed to have been formed until a certificate, made as aforesaid, shall be acknowledged by all the parties, before some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the principal place of business of the partnership is located, in a book to be kept for that purpose, open to public inspection. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable as general partners for all the engagements thereof.

Sec. 947. Upon every renewal of a limited partnership beyond the time originally agreed upon for its duration, a certificate shall be made, as provided for in the original formation of partnership; if not renewed, it shall be deemed a general partnership.

Sec. 948. The business of the partnership shall be conducted under a firm, in which names of the general partners only shall be inserted. The name of any special partner shall be used in said firm with his consent, or if he shall personally make any contract respecting or concerning the partnership with any person except the general partner.

Sec. 949. During the continuance of any partnership under the provisions of this chapter, no part of the capital stock thereof shall be withdrawn, nor any division of interests be made, so as to reduce such capital stock below the sum stated in the certificate before mentioned. If, at any time during the continuation or at the termination of the partnership, the property assets shall not be sufficient to pay the partnership debts, the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn respectively.

Sec. 950. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid, unless it provide for a distribution of the partnership property among all the creditors, in proportion to the amount of their several claims.

Sec. 951. In all cases of such assignment as provided in the preceding section, the assent of the creditors shall be presented, unless within sixty days after notice thereof any shall dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper, printed in the county where the place of business of the party making it is situated, or, if no newspaper be printed in such county, then in some newspaper in the Territory nearest thereto, within twenty days after making such assignment.

Sec. 952. All suits respecting the business of such partnership shall be prosecuted by and against the general partnership, except in those cases in which provisions are made in this chapter, that the special partners shall be deemed general partners, and that special partnership shall be deemed general partnership, in which cases all the partners deemed general partners may join or be joined in such suit, and excepting also those cases where special partners shall be held severally responsible on account of any sum by them received or withdrawn from the common stock, as before provided.

Sec. 953. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the recorder's office in which the original certificate of renewal of the partnership was recorded, and unless such notice shall also be published for three successive weeks in some newspaper printed in the county where the certificate of the foundation of such partnership was published according to the provisions of this chapter; and if no newspaper shall, at the time of such dissolution be printed in the county, then the notice of such dissolution shall be published in some newspaper in the Territory nearest thereto.

Sec. 954. In all cases not otherwise provided for in this chapter, the members of limited partnership shall be subject so all the rights of general partners.

Note.—Act of January 12th, 1872.

CHAPTER L.

POOR.

Sec. 955. County commissioners vested with entire control.
Sec. 956. Relations to care for poor; penalty for neglect.
Sec. 957. Order in which relations liable.
Sec. 958. When pauper may receive relief from the county.
Sec. 959. Order to publish notice for proposals to care for the poor.
Sec. 960. Bids to be received annally and contract to be let to lowest responsible bidder.
Sec. 961. Contract for medicines and medical attendance.
Sec. 962. Bond of contractor; duty of physician to examine paupers and notify contractor.
Sec. 963. Minor pauper to be apprenticed and educated.
Sec. 964. Persons not paupers falling sick to be cared for.
Sec. 965. Application of persons seeking relief.
Sec. 966. Paupers belonging to another county to be removed; Notice for pauper to leave.

Sec. 967. *After notice, pauper not entitled to relief.*
Sec. 968. *Poor farm and work house.*
Sec. 969. *Surplus moneys in poor fund.*
Sec. 970. *Penalty if county commissioners neglect duty.*
Sec. 971. *Commissioners may reject any and all bids of parties offering to contract.*

Sec. 955. That the board of county commissioners of the several counties of this Territory are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

Sec. 956. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmities, idiocy, lunacy, or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person, if they, or either of them, be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, sister or brother, when directed by the board of county commissioners of the county where such poor person shall be found, whether such relation reside in the county or not, shall forfeit and pay to the county for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners, for the use of the poor aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided,* That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support except parent or child.

Sec. 957. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of such poor person shall be next called on; and if there be no parents or children of sufficient ability, the brothers and sisters shall next be called on; and if there be no brothers and sisters, the grandchildren of such poor person shall be called on, and then the grandparents; but married females, while their husbands live, shall not be liable to a suit.

Sec. 958. When any poor person or persons shall not have relations in any county in this Territory, as are named in the preceding sections, or such relations shall not be able financially, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury, as is hereinafter provided.

Sec. 959. The county commissioners of their respective counties shall, at their regular session in September of each year, make an order directing the clerk of the board to publish a notice in a newspaper, inviting sealed proposals for the care, support, and maintenance of the sick, poor, and infirm of the county, per capita, by the week, for the succeeding year; said proposals to include and cover the entire cost of feeding, clothing and nursing of the said sick, poor and infirm, and all burial expenses thereof; said notice to be inserted in said newspaper immediately after the order is made, and continue for four consecutive weeks.

Sec. 960. Said proposals shall be addressed to the clerk of the board of county commissioners, and the said commissioners shall, at their December term, in the year A. D. 1876, and annually thereafter, open and carefully compare said bids, or proposals, and shall award the contract for the care, support, and maintenance of the sick, poor, and infirm of the county, by the week, per capita, to the lowest responsible bidder for the ensuing year.

SEC. 961. And the boards of county commissioners of the several counties shall, annually at their December meeting, make a contract with some resident practicing physician, to furnish medicines and medical attendance to the said sick, poor, and infirm of their respective counties, and to the inmates of the county jail who may require medicines or medical treatment for the succeeding year.

SEC. 962. The person or persons to whom said contracts shall be awarded, as provided for in sections 960 and 961 of this chapter, shall, before entering upon their duties as such contractors, execute a bond running to the people of the Territory of Montana, in a sum not less than one thousand, nor more than five thousand dollars, with two or more sureties, conditioned for the faithful performance of their respective contracts; said bond to be approved by and filed with the probate judge of the county. It shall be the duty of the physician to whom such contract shall be awarded, in whole or in part, as provided in section 961 of this chapter, to examine each week all persons who are or may become a charge upon the county, and, if after such examination he shall be satisfied that the physical condition of such person or persons is such as to enable such person to support and maintain himself or herself, he shall so notify the contractor or contractors having such person or persons in charge, as provided for in section 960 of this chapter, by leaving with such contractor or contractors a notice, and file a duplicate thereof with the clerk of the board of commissioners, which notice shall be in substance as follows, to-wit: "A B.—You will take notice that C D has so far recovered as to require no further care or medical treatment. (Signed) E F, Physician."

And after the serving of said notice, and filing the duplicate thereof with the clerk, said person mentioned in said notice shall cease to be a charge upon said county.

SEC. 963. When any minor under fifteen years of age, or any other person shall become, or be likely to become, chargeable to the county, either because of being an orphan, or because the parents or other relatives, as aforesaid, are unable or refuse to support such minor, it shall be the duty of the county commissioners, upon a written application to them made by any person of the county, to bind such minor as an apprentice to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice. And such minor shall be permitted to attend school, if there is one kept in his or her district, for some period of time in each year, to be prescribed in the article of indenture by the said board of county commissioners. And if said commissioners shall fail, neglect, or refuse to so apprentice said minor at their regular session immediately succeeding said application, then said county shall not thereafter be chargeable with the care, support, and maintenance of such minor person or persons.

SEC. 964. When any non-resident, not coming within the definition of a pauper, shall fall sick in any county in this Territory, not having money or property to pay his board, nursing, or medical attendance, it shall be the duty of the commissioners of the proper county, on application being made, to give, or order to be given, such assistance to such person as they may deem just and necessary; and if such sick person shall die, then the said commissioners shall order to be given to such person decent burial; and the said commissioners shall make such allowance for board, nursing, and medical attendance, or burial expenses, as they may deem just and equitable, and order the same to be paid out of the county treasury.

SEC. 965. All persons seeking relief under the provisions of this chapter shall make application to the chairman of the board of county commissioners, or to the probate judge of said county, who, before granting an order for such relief, shall require of said pauper satisfactory evidence that he or she has been a resident of the county for two months, immediately preceding the day upon which said application is made.

SEC. 966. When application is made by any pauper to the board of county commissioners as aforesaid, it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county for two months, he shall be entitled to all the relief provided by this chapter; but if on examination it shall appear that said pauper is a resident of some other county of this Territory, the commissioners shall, at the expense of the county, cause said pauper to be removed to the county of which he is a resident, or may, if they think best, issue a notice directed to some constable of the county, which said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county; and after so serving said notice by reading the same to said pauper, said constable shall within five days thereafter return the same to the clerk of the board of county commissioners issuing the same, noting the time and manner of service.

SEC. 967. After service of such notice aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners deem it absolutely necessary.

SEC. 968. The board of county commissioners of any county in this Territory may, if they think proper, purchase, improve, and keep in repair a tract of land not exceeding one hundred and sixty acres, to be known as a poor farm, and to erect thereon suitable work houses for the use, health, and employment of such person or persons as are, or who may become, from time to time, a county charge; and such poor farm, with such work houses as may be erected thereon, together with such pauper as may become a county charge, shall be under such rules and regulations as the county commissioners may deem just and proper; and the county commissioners may, if in their judgment they deem it best, provide for the care, support, and maintenance of the sick, poor, and infirm of their respective counties upon said poor farm.

SEC. 969. Any surplus that may accumulate in the poor fund of the several counties, may be set apart and applied to the purposes of section 968 of this chapter.

SEC. 970. Any county commissioner, or commissioners, who shall fail, refuse, or neglect to perform any of the duties prescribed by the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than five hundred dollars.

NOTE.—Preceding sections of this chapter Act February 11th, 1876.

SEC. 971. That nothing contained in sections 959, 960, or 961, of this chapter shall be so construed as to prevent the county commissioners of the several counties of this Territory from rejecting any and all bids which they may receive under the provisions of said sections: *Provided,* When any contract shall be let for the maintenance of such sick and poor it shall be let to the lowest responsible bidder.

NOTE.—Last preceding section Act January 26th, 1877.

CHAPTER LI.

PRINTING.

Sec. 972. *Governor, president and speaker to contract for Territorial printing.*
Sec. 973. *Time of contract.*
Sec. 974. *Order in which legislative printing to be done.*
Sec. 975. *To be printed and delivered within three days.*
Sec. 976. *Officers' reports to be printed by contractor.*
Sec. 977. *Laws and resolutions to be printed.*
Sec. 978. *Penalty should secretary fail in his duty.*
Sec. 979. *Distribution of newspapers containing laws.*
Sec. 980. *Pay for printing laws.*
Sec. 981. *Rates for other printing.*
Sec. 982. *Monthly account of printer to be audited and paid.*
Sec. 983. *Governor, president and speaker to contract for county printing; rates of.*
Sec. 984. *To contract for all public and legal advertisements, etc.*
Sec. 985. *Printer's certificate of due publication.*
Sec. 986. *Publication in any other paper void.*
Sec. 987. *Printer's account for county printing presented and audited quarterly.*
Sec. 988. *Bond of contractor.*
Sec. 989. *Term folio defined.*
Sec. 990. *Upon failure of first contractor; contract to be awarded to another.*
Sec. 991. *Printing not herein provided for to be done at same rates.*

SEC. 972. That the governor, president of the council, and speaker of the house of representatives, or a majority of them, are hereby authorized and directed, immediately after the passage of this chapter, to contract with such person or persons as they may deem proper in the interest of the Territory, for all printing of whatever nature, for the use of the legislative assembly, the auditor's and treasurer's offices of the Territory, and the superintendent of public instruction, payment for the printing of which is not provided for by the United States Government; the said contract to be made in writing and signed by the contracting parties: *Provided,* That no printing shall be contracted for, under the provisions of this chapter, unless the same is expressly authorized by law.

SEC. 973. That said contract shall be made and continued in force for the period of two years from the date of its execution.

SEC. 974. That the party contracting to do such printing shall print all bills or other documents ordered by either house of the legislative assembly to be printed, the printing of which is not provided for by the laws of the United States, in the order in which they shall be numbered and delivered to him, and shall return them in like manner, unless otherwise specially ordered.

SEC. 975. That all bills, reports and other documents which may be specially ordered printed by either house of the legislative assembly, shall be printed and returned to the house which shall have ordered them within three days after the delivery of the copy of the same to the party contracting to do the printing under the provisions of this law, unless, on motion, a longer time be given.

SEC. 976. That all officers of the several departments of the Territory who by existing or future laws, may be required to make reports to the governor, or legislative assembly at any session thereof, payment for the printing of which is not provided for by the laws of the United States, shall cause the same to be printed by such party contracting to do the printing as aforesaid, for the use of the legislative assembly, and shall present the same to that body within the first week of each session.

SEC. 977. That each person contracting to do said printing, shall publish in a newspaper, to be designated in the contract aforesaid, within sixty days after the adjournment of each legislative assembly, such laws and resolutions as the governor, president of the council, and speaker of the house of representatives may designate and direct to be published, and it is hereby made the duty of the secretary of the Territory to deliver to such person so contracting to do such printing within twenty days after the adjournment *sine die* of both houses of the legislative assembly, certified copies of such laws as the said governor, president of the council, and speaker of the house may so designate to be published.

SEC. 978. That in case the said secretary shall fail to perform the duties prescribed in the preceding section, he shall be deemed guilty of a misdemeanor, and shall pay a fine of fifty dollars for each and every day he shall have failed to perform the duties hereinbefore described; and upon complaint of any citizen of the Territory before any court of competent jurisdiction, it is hereby made the duty of the district attorney of the district in which said offence may be committed, to enforce the provisions of this chapter, and collect the fine herein imposed in the same manner as other fines are enforced; and when any fines are collected under the provisions of this chapter, the same shall be paid into the school fund of the county in which said fine shall have been collected.

SEC. 979. That the said party contracting to do the printing as aforesaid, shall deliver to the auditor of the Territory copies of the journal or newspaper containing any of the laws and resolutions of the legislative assembly which shall have been printed as directed by the said governor, president of the council, and speaker of the house of representatives, immediately after the same shall have been published therein; and immediately thereafter the said auditor shall cause copies of the said designated newspaper containing the laws and resolutions as aforesaid, to be sent to the judges, clerks of courts and all Territorial, district, county and township officers; and it shall be their duty to preserve all copies of said newspaper so received carefully in their respective offices; that not exceeding one hundred copies of each journal containing such laws shall be paid for at the rates herein prescribed.

SEC. 980. That said person or persons contracting to do the printing as aforesaid, shall receive ten dollars for every hundred copies of the newspaper containing the published laws and resolutions as aforesaid, and so delivered to the auditor of the Territory, as directed by the preceding section, in addition to the remuneration hereinafter provided. Each copy of the newspaper so furnished shall contain not less than three printed columns of the laws and resolutions as aforesaid.

SEC. 981. That all printing for the Territory, or for any department of the Territorial government, performed by the party contracting to do the printing as aforesaid, shall be executed on the following terms: For the printing of bills and other matter for the use of and ordered by the legislative assembly, and reports printed in pamphlet form, the rates paid by the United States government, under the laws thereof, and under the rules prescribed by the treasury department of the United States.

For printing the laws and resolutions of the legislative assembly designated as aforesaid, in the newspaper as aforesaid, seventy-five cents for every folio of one hundred words.

The following named blanks shall be printed by the party contracting as aforesaid, at the following rates:

Blank licenses with stubs, bound, eight dollars per thousand copies.
Tax receipts with stubs, bound, seven dollars per thousand copies.
Blanks for statistics, nine dollars per thousand copies.

For publishing all notices and legal advertisements pertaining to the several departments of the Territorial government:

For every folio of one hundred words, two dollars shall be paid for the first insertion thereof, and fifty cents per folio of one hundred words for each subsequent insertion required by law to be made.

SEC. 982. That said party contracting to do the Territorial printing as aforesaid, shall render once in each month to the Territorial auditor an itemized account, under oath, of all the printing and advertising done for the Territory, or either house of the legislative assembly, or for any officers or department of the Territorial government. And the said auditor and the governor shall examine the same, and if they find it to be correct and in accordance with the provisions of this chapter, the auditor shall draw his warrant on the Territorial treasurer for the payment of the same.

SEC. 983. That it is also made the duty of the said governor, president of the council, and speaker of the house of representatives, in like manner to contract with such person or persons as they may deem proper, in the interest of the several counties in the Territory, to do and perform all the printing for which said counties may be chargeable, including legal advertising, blanks, and official publications, at the following rates:

For every folio of one hundred words, two dollars shall be paid for the first insertion thereof, and fifty cents per folio of one hundred words for each subsequent insertion required by law to be made.

For rule and figure work, two dollars and fifty cents per folio of one hundred words, shall be paid for the first insertion, and one dollar per folio of one hundred words for each subsequent insertion required by law to be made.

That the printed blanks, required by law to be printed for the several counties, shall be furnished at the following rates:

Notices to tax-payers, seven dollars and fifty cents per thousand copies.

Assessors' blanks, thirty dollars per thousand copies.

Special poor tax receipts with stubs, bound, twenty dollars per thousand copies.

Road tax receipts with stubs, bound, twenty dollars per thousand copies.

County warrants with stubs, bound, thirty dollars per thousand copies.

SEC. 984. That the said governor, president of the council, and speaker of the house of representative, shall select and contract with a person or persons resident in and publishing a newspaper in each of the counties, to do the printing in said county of which he is a resident; or in case no paper is published in any county, or no publisher in any county will contract under the terms and provisions of this chapter to do the printing of said county, then the governor, president of the council, and speaker of the house of representatives, or a majority of them, shall contract with the proprietor of a newspaper having a reasonably large circulation in said county, to do all the printing of every description, for which said county may be chargeable, at the rates recited in this chapter, which shall be paid for in warrants upon the contingent fund of said county or counties, and all legal advertisements of whatever character required by law to be published shall be printed and paid for at the rates provided for in section 983 of this chapter.

SEC. 985. It shall be the duty of the party contracting to do the printing of any county, upon the payment of the printer's fees, in case of any legal advertisement, to file in the clerk's office of the court having jurisdiction, his affidavit, with a copy of said advertisement ordered by said court to be published, appended, together with a receipt of the printers' fees, paid by the party at whose instance or for whose benefit such advertisement shall have been made, to be collected as other costs; which affidavit shall state the date of the papers in which said advertisement appeared, and the number of times the same evidence of the publication of the same, and no other evidence of such was inserted, and be filed and recorded by the clerk as the legal publication shall be required or allowed.

SEC. 986. That the contract to do the printing for each of the said counties in the Territory aforesaid shall be for the same period prescribed by section 973 of this chapter. Each person so contracted with shall publish in a newspaper designated by the governor, president of the council, and speaker of the house of representatives, all the legal and judicial advertisements of said county, or required to be done in said county, of whatever character; and after such contract as aforesaid and notice thereof to the county commissioners, probate judge, recorder, clerks of courts, and sheriff of said county, every publication or advertisement in any other paper than the one so designated, shall, during the term of such contract, be null and void for any legal purpose.

SEC. 987. That any party who shall have contracted to do the printing in any county in this Territory, under the provisions of this chapter, shall, every three months, make out and present to the board of county commissioners of such county, an itemized account, under oath, of all the printing done in each quarter which is lawfully chargeable against such county. The board of county commissioners shall examine the same, and if they find said account correct, and in accordance with the provisions of this chapter and the contract made thereunder, they shall allow the same and draw their warrant in favor of said contracting party upon the contingent fund of such county.

SEC. 988. That such person contracting to do the Territorial printing shall make and file in the office of the Territorial auditor a good and sufficient bond running to the people of the Territory of Montana, with two or more securities, to be approved by said auditor, which said bond shall be in the sum of five thousand dollars, and conditioned for the faithful performance of his said contract and the execution of all printing so to be done by him upon good material and in a good and workmanlike manner; and each of said persons receiving contracts to do printing in any of the several counties of this Territory, shall in like manner make, execute and file with the county clerk of such county, a good and sufficient bond in the sum of two thousand dollars, with two or more sureties, to be approved by said clerk, with like conditions as in the case of the person contracting to do the Territorial printing.

SEC. 989. The term folio in this chapter shall mean one hundred words, counting each figure as one word. When there are over fifty and under one hundred words, they shall be counted as one folio, but a less number than fifty words shall not be counted as one folio, except when the whole statute, notice, advertisement or order contain less than fifty words.

SEC. 990. That if any newspaper that has been designated under the provisions of this chapter, in which Territorial or county printing is to be done, shall be destroyed, suspended, or otherwise fail to fulfill any contract made for printing in pursuance of the provisions of this chapter, then, in that case, it shall be the duty of the governor, president of the council, and speaker of the house of representatives, or a majority of them, to at once contract with some other publisher for such public printing.

SEC. 991. All other blanks or printing that may be necessary for the Territory or any of the several counties of said Territory, under existing or any future laws, and not herein provided for, shall be furnished and paid for at the same rates as herein provided for similar blanks, or printing.

NOTE.—Act January 21st, 1876.

CHAPTER LII.

REAL ESTATE.

Sec. 992. *Rights of parties occupying the public domain.*
Sec. 993. *Declaration or deed to be recorded, etc.*
Sec. 994. *Transferable interest of owner of claim.*
Sec. 995. *Rights of occupancy and possession determined by the local law.*
Sec. 996. *Form of declaration.*
Sec. 997. *Muniment of title to be recorded.*
Sec. 998. *Records to be received as evidence; except when.*
Sec. 999. *Declaration not to include mines.*

SEC. 992. Conceding to the United States of America the primary and paramount right to dispose of the soil of this Territory, according to the laws existing or to be enacted by congress, and full and complete exemption from every form of taxation of their property, it is hereby declared that as between all citizens now residing in, or who shall hereafter come to reside in this Territory, and as between them, or any of them, and others having or claiming now, or hereafter pretending to have or claim, any right to occupy, possess, or enjoy any portion of the public domain, situate within the boundaries of this Territory, as between each and every one of them, and all other persons, associations, corporations, and powers, except the government of the United States of America, the right as the same may exist under the local laws to occupy, possess, and enjoy any tract or portion thereof, not to exceed one hundred and sixty acres, in such form as may be prescribed by the laws of the United States, shall be respected in law and in equity in all the courts and tribunals of this Territory, as a chattel real, possessing the character of real estate.

SEC. 993. All rights of occupancy, possession, and enjoyment of any tract or portion of the said public domain, except mining claims, shall be expressed and described in a declaration, in cases of original occupation, and by deed, in cases of purchase, duly acknowledged by some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the land is situated.

SEC. 994. The owner of every claim or improvement on any tract or parcel of land, has transferable interest therein, which may be sold by execution or otherwise, and any sale of such improvement is a sufficient consideration to sustain a promise.

SEC. 995. All rights of occupancy, possession, and enjoyment of any tract or portion of the said public domain acquired before the passage of this chapter, shall be ascertained, adjudged, and determined by the local law of the district or precinct in which such tract is situated, as it existed on the day when such rights were acquired, or as it thereafter may have existed, then by the common custom then prevailing, in respect to such property, in the district or precinct in which it existed.

Sec. 996. The declaration of an occupant of a tract or portion of the public domain, required by section 993 of this chapter, shall be substantially in the following form:

To all whom these presents may concern: Know ye, that I, A B, of ———, in the county of ———, in the Territory of Montana, do hereby declare and publish as a legal notice to all the world, that I have a valid right to the occupation, possession, and enjoyment of all and singular that tract or parcel of land not exceeding one hundred and sixty acres, situate, lying, and being in the township of ———, in the county of ———, in the Territory of Montana, bounded and described as follows: [Here insert the description;] together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

Witness my hand and seal, this ——— day of ———, one thousand eight hundred and sixty ——.

To be subscribed with the full christian name and surname of the person making the application, acknowledged in the same manner as a deed of real estate.

Sec. 997. All persons, associations, and companies, now claiming individually and collectively, the right to the occupancy, possession and enjoyment of any tract or parcel of the said public domains, except mining claims, under or by virtue of the terms expressed in section 995 of this chapter, shall deposit all deeds, declarations, and other muniments of title, for record, with the recorder of the county in which the lands shall be situated, within three months from the time a duly elected recorder shall enter upon his duties, unless within that time the books of record in which they may have been recorded according to the local law or custom shall have been deposited in said office for the public use.

Sec. 998. In all legal or equitable proceedings hereafter instituted in any court in this Territory, the record of any declaration, deed, or mortgage, or any other muniments of right referred to in sections 994 and 996 of this chapter, shall be received except as against the United States, as presumptive evidence of the regularity of the paper itself, under the local law or custom existing at the true time of its execution, and if the regularity thereof shall be challenged, the burden of proving the alleged irregularity shall be upon the party making the challenge.

Sec. 999. The declaration of every occupant of any tract or portion of the public domain mentioned in section 996 of this chapter, shall not be construed to include any gold-bearing quartz lodes, silver lodes, or gold diggings, but said lodes or diggings shall be excepted from the tract of said occupant, and shall be subject to be occupied, possessed, and enjoyed, according to the local laws or customs of the district in which the same may be situated, and if there shall be no local law or custom in said district, then by the custom prevailing in the nearest mining district thereto.

Note.—Act of January 12th, 1872.

CHAPTER LIII.

REVENUE.

ARTICLE I.

OF THE LEVYING AND COLLECTION OF TAXES AND OF TAXABLE PROPERTY GENERALLY.

Sec. 1000. *Annual rate of taxation.*
Sec. 1001. *Tax to be a lien on property assessed.*
Sec. 1002. *What property to be taxed and what to be exempt.*
Sec. 1003. *Specification of property to be taxed.*
Sec. 1004. *By whom property to be listed.*
Sec. 1005. *In what county property to be taxed.*
Sec. 1006. *How property belonging to another to be listed.*
Sec. 1007. *Property of bridge, canal, road companies and the like.*
Sec. 1008. *Property to be listed annually and valued at its true value.*
Sec. 1009. *Bank notes and shares of stock.*
Sec. 1010. *Term "credit" defined.*
Sec. 1011. *Duties of assessor.*
Sec. 1012. *Personal property may be assessed at any time.*
Sec. 1013. *What the list shall contain.*
Sec. 1014. *Written questions to be answered by and oath of tax payer.*
Sec. 1015. *Assessment roll to be made and returned by assessor.*
Sec. 1016. *Oath of assessor to be attached to assessment roll.*
Sec. 1017. *Compensation of assessor.*
Sec. 1018. *Commissioners to furnish blanks and instructions.*
Sec. 1019. *Time taxes to be levied.*
Sec. 1020. *Board of correction and its duties.*
Sec. 1021. *Poor tax and collection thereof.*
Sec. 1022. *Tax list to be made by county clerk.*
Sec. 1023. *Warrant to authorize treasurer to collect.*
Sec. 1024. *Abstract of assessment roll filed with auditor.*
Sec. 1025. *Errors in names on assessment roll may be corrected.*
Sec. 1026. *Of the notice to tax payers and the collection of taxes.*
Sec. 1027. *Taxes on property removed or attempted to be removed may be collected as debts.*
Sec. 1028. *Collection by attachment, garnishment or otherwise.*
Sec. 1029. *Sale of real estate on third Monday in January.*
Sec. 1030. *Notice of time and place of sale.*
Sec. 1031. *Time of day when sold.*
Sec. 1032. *Treasurer's return of sale of lands.*
Sec. 1033. *Highest bidder; homestead, etc.*
Sec. 1034. *Bidder failing to pay, land again sold.*
Sec. 1035. *Certificate of purchase.*
Sec. 1036. *How assigned and effect of.*
Sec. 1037. *Who may redeem and how lands redeemed.*
Sec. 1038. *Certificate of redemption.*
Sec. 1039. *Deed for lands sold.*
Sec. 1040. *Form of deed.*
Sec. 1041. *Remedy of purchaser injured by mistake or wrongful act of treasurer.*
Sec. 1042. *Settlement of county treasurer.*

Sec. 1043. *Proceedings against treasurer on failure.*
Sec. 1044. *Treasurer is ex-officio collector of taxes.*
Sec. 1045. *Sale of personal property seized for taxes.*
Sec. 1046. *Assessment districts.*

Sec. 1000. There shall be levied annually by the board of county commissioners of each county in this Territory, and collected by the county treasurer of such counties, an *ad valorem* tax, on each dollar of assessed valuation on all property in this Territory, subject to taxation, for Territorial purposes, on each dollar, three mills; for county purposes on each dollar, any sum not exceeding sixteen mills; and for school purposes, not less than three, nor more than five mills; and for the benefit of the poor, not less than one, nor more than five mills; and such levy, when made, shall be entered on the books of said commissioners, and in any county where the levy for the current year has been made, the county commissioners of each county shall, at their meeting, proceed to levy such taxes as they are herein authorized to levy, unless they at their January meeting have levied the same.

Note.—Act of February 9th, 1874.

Sec. 1001. Every tax levied under the provisions of this chapter is hereby made a lien against any and all the property assessed, and such lien shall attach at the time of such assessment, and shall not be satisfied or removed until such taxes are paid.

Sec. 1002. All property of every kind and nature in this Territory on the first day of January of each year, or which shall arrive or be found in this Territory before the last day of December, ensuing, shall be subject to taxation, except:

First. All lands and lots of ground, with buildings, improvements, and structures thereon, belonging to the Territory, and all lands and property belonging to the United States, or to this Territory, or any municipal corporation, or to any county of the Territory.

Second. Court houses, jails, town halls, houses occupied by fire and military companies, and their apparatus, and other public structures and offices, and all squares and lots kept open for health, or public uses or for ornament, belonging to any county, city, town, or village in this Territory; public libraries, colleges, school houses, and other buildings for the purposes of education, with their furniture, libraries, and all other equipments and lots of land thereto appurtenant and used therewith, so long as the same shall be used for that purpose: *Provided,* That when any of the property mentioned in this sub-division is private property, from which a rent or other valuable consideration is received for its uses, the same shall be taxed as other property.

Third. Public asylums, hospitals, poor houses, and other charitable or benevolent institutions for the relief of the indigent or afflicted, and the lots or lands thereto appurtenant, with all their furniture and equipments, all grounds and buildings belonging to agricultural societies, so long as the same shall be used for that purpose only, and without pecuniary gain.

Fourth. Churches, chapels, and equipments, and the lots of ground appurtenant thereto and therewith, provided rent is not paid for such ground, so long as the same is used for that purpose only, without yielding rent.

Fifth. The buildings and lots of ground appurtenant thereto, and used therewith, owned and used by the Order of Free and Accepted Masons, the Independent Order of Odd Fellows, or by any benevolent or charitable society, if no rents are derived therefrom.

Sixth. Cemeteries and graveyards, set apart and used for interring the dead.

Seventh. The property of widows or orphan children, not to exceed the amount of one thousand dollars to any one family.

Eighth. Growing crops.

Ninth. Mines and mining claims, except those held under a patent from the United States: *Provided*, That all machinery used in mining claims, and all property and improvements appurtenant to or upon mining claims, which have an independent and separate value, shall be subject to taxation. Tools of mechanics, farming tools of husbandmen, all libraries of professional men and private citizens, household furniture of families or householders, which do not exceed in value the sum of two hundred and fifty dollars.

SEC. 1003. All other property, real or personal, within the Territory, is subject to taxation in the manner herein directed, and this is intended to embrace improvements on lands and lots in towns, including land bought from the United States, and from this Territory, whether bought on credit or otherwise, being franchises, which, for the purposes of this chapter, are to be considered real property; ditches and flumes, horses, oxen, cows and calves, mules and asses, sheep, swine, and goats, money in coin or gold dust, whether in possession or on deposit, and including bank bills, property or labor due from solvent debtors on contract or on judgment, whether in this Territory or not, mortgages and other like securities, stocks, or shares in any bank or company, incorporated or otherwise, and whether incorporated by this or any other Territory or State, or whether situated in this Territory or not; public stock or lands, household furniture, not otherwise exempt, including gold and silver plate, musical instruments, watches and jewelry, pleasure carriages, stages, hacks, and other vehicles for transporting passengers, wagons, carts, drays, sleds, and other descriptions of vehicles or carriages; boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this Territory or not, if owned, either in whole or in part, by persons who are inhabitants of this Territory; annuities, but not including pensions from the United States, or any of the States.

SEC. 1004. Every inhabitant of this Territory, of full age and sound mind, shall list all property subject to taxation in this Territory of which he is the owner, or has the control or management, in the manner hereinafter directed; but the property of a minor or insane person is to be listed by his guardian, or, if he have no guardian, then by his father, if living, if not, then by his mother, if living, if not, then by the person having the property in charge; if a married woman, by her husband, but if he be unable or refuse, then by herself; if a beneficiary for whom property is held in trust, by the trustee; and if the personal property of a decedent, by the executor; of a body corporate, company, society, or partnership, by its principal accounting officer, agent, or a partner. Property under mortgage or lease is to [be] listed by and taxed to the mortgagee or lessee, unless it be listed by the mortgagor or lessor, and, in all cases, said property shall be listed in the name of the owner.

SEC. 1005. All personal property shall be listed, assessed, and taxed in the county where the same may be found, unless the owner or agent produce a receipt or certificate from the tax collector or assessor, showing that he has paid tax or been assessed for taxation on said property, in some other county of the Territory for the same year: *Provided*, That all goods, wares, and merchandise in transit to, or belonging to, or consigned to a resident of this Territory, shall not be assessed or taxed until such goods, wares, or merchandise shall reach its destination or place of consignment: *And provided, further*, That all live stock belonging to any permanent resident or residents of this Territory shall not be assessed nor taxed in transit nor until it arrives in the county in which said person or persons reside, unless such live stock belonging to any permanent resident or residents be turned out to run at large in some other county off the range of such permanent resident or residents.

SEC. 1006. All persons required to list property in behalf of another shall list in the same county in which he would be required if it were his own, except as herein otherwise directed, but he must list it separately from his own, naming the person or estate to whom or to which it belongs, but the undivided property of a person deceased belonging to his heirs, with or without naming the several heirs.

SEC. 1007. The property of corporations or companies constructing bridges, canals, ditches, flumes, railways, plank roads, grading roads, turnpike roads, telegraph lines, and similar improvements, shall be assessed to each corporation or company, and their interests are to be taxed in this Territory, in the county or localities in which such bridges, canals, flumes, railways, plank roads, grading roads, turnpike roads, telegraph lines, and similar improvements may be in, and to the extent of such improvements as may be found to be in the county or counties in which the same may be situated, and to this end the assessor is directed to require the secretary or clerk, or whatever officer of corresponding duties there may be, to render, under oath, a list of the number of miles and value of such improvements as may be, in each separate county through which the same may be constructed, or in which the same may be situated.

SEC. 1008. All taxable property is to be listed and valued each year, and shall be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantages, the general improvement in the vicinity, and all other elements of its value.

SEC. 1009. Depreciated bank notes, or stocks, or shares in corporations or companies, when taxable, and credits and annuities, shall be assessed at their cash value.

SEC. 1010. The term credit includes every claim or demand for money, labor, or other valuable thing, and every annuity or sum of money receivable at stated periods, and all money in property of any kind, except pensions from the United States or any of the States.

THE DUTIES OF ASSESSOR.

SEC. 1011. The district assessors of each county shall assess and value all property required by the provisions of this article to be assessed and valued, and between the first day of February and the tenth day of September in each year, shall demand of each tax payer in his district a list, as hereinafter provided, of his, her, or their property; and if the said list be not rendered, under oath, at the time such demand be made, the assessor shall proceed to list and assess the property of any such taxpayer, according to his best knowledge and information, and shall add twenty per cent. to the value thereof: *Provided,* That upon all personal property, when the owner has not sufficient real property which is not exempt from taxation to pay the taxes which would be levied against the personal property of such owner, the assessor shall report his assessment forthwith to the tax collector of the county; and if there be danger that any of such property will be removed from the county, the assessor shall have power, and it shall be his duty to seize a sufficient amount of property to pay the taxes and cost. He shall forthwith report such seizure to the tax collector of the county, who shall hold the property seized until such taxes are paid. It shall be the duty of the tax collector, immediately on the receipt of the assessment against any personal property mentioned in this section, to levy the tax thereon; and, if the tax levied be not paid within ten days from the time the assessment was made, he shall proceed to sell the property seized by the assessor, and shall seize and sell other personal property on which taxes have been levied by the provisions of this section, and shall sell the same in the manner provided for the sale of personal property on execution.

SEC. 1012. It shall be the duty of the assessor to proceed to assess all property that may come into his district, or which he may have failed to assess, at any time during the year, after he shall have received from the commissioners the blanks as required in section 1018 of this article.

SEC. 1013. The list shall contain:

First. His, her, or their lands, to be designated by township, range, section, and any division or part of section; and where such part is not a government division or subdivision, then some other description to identify it; and his town lots, naming the town in which they are situated, and their proper description by number and blocks, or otherwise, according to the system of numbering in the town.

Second. His, her, or their personal property employed in merchandise, amount of capital employed in manufactories, number of horses, number of mules and asses, number of sheep, number of oxen, number of cows and calves, number of swine, number of goats, number of carriages of every description, amount of money and credits, number of clocks and watches, number of pieces of jewelry and gold and silver plate, number and kind of musical instruments, number of dogs and bitches, amount of taxable household furniture, amount in stocks or shares in any corporation or company, and amount of all other taxable property not enumerated.

SEC. 1014. Before proceeding to assess any property under the provisions of this article, it is hereby made the duty of the assessor to administer to the person about to be assessed the following oath or affirmation:

"You do solemnly swear that you will well and truly answer all questions in the following list, and that it embraces all moneys, goods, live stock, credits, and all other property, of any description whatever, owned or held by you as principal, partner, agent, or representative, as the case may be, according to the best of your knowledge. So help you God.

"[Signed.] A. B——."

What is your post office address?

How many acres of land do you own?

Where are such lands?

Describe them.

What are the improvements on the same?

How many town lots do you own?

Where are they?

Describe them.

What are the improvements on the same?

What amount of merchandise do you own?

Where is it?

What amount of capital have you invested or employed in manufactures.

Where are such manufactures situated?

How many horses do you own?

Where are they kept?

How many mules or asses do you own?

How many sheep do you own?

Where are they kept?

How many oxen and unbroken steers over two years old do you own?

How many cows over two years old do you own?

How many heifers and steers between one and two years old do you own?

How many bulls do you own?

Where are these cattle kept?

How many hogs do you own?

How many goats do you own?

How many dogs and bitches do you own?

How many wagons or carriages, of any description, do you own?

How much money do you own?

What amount of credits of any kind do you own?

How many watches do you or any member of your family own?

How many clocks do you or any member of your family own?

How many pieces of jewelry do you or any member of your family own?

How many pieces of gold or silver plate do you or any member of your family own?

How many musical instruments do you or any member of your family own?

How much taxable household furniture do you own?

What amount of stocks or shares in any corporation or company do you own?

Have you any of the above list of articles in your charge as agent or representative? If so, how much?

Have you any other property than that above mentioned? If so, enumerate it.

And the assessor shall attach his certificate to each list so made, certifying that the person making such list put down the answer to each question propounded in said list, or directed the assessor to do so for him, and shall certify the true date of such assessment.

SEC. 1015. On or before the tenth of September, annually, the assessor shall make out and deliver to the county clerk an assessment roll, containing in tabular form and alphabetical order, the names of the persons and bodies in whose names property has been listed in his district, with the several species of property and the value, as hereinbefore indicated, with the columns of numbers and value footed; and, in a coulmn to be provided for that purpose, he shall write the words, "by the assessor," when the list was made by himself, together with the words, "absent or sick," or the words, "refused to list," or "refused to swear," or such other words as will express the cause why the person required to make the list did not make it, and neglect shall be taken as a refusal.

SEC. 1016. The assessor shall take and subscribe an oath, to be certified by the officer administering it, and attach it to the assessment roll, which oath is to be in substance as follows:

"I, C D, assessor of ——, of —— county, do solemnly swear that the value of all property, money, and credits, of which a statement has been made, and verified by the oath of the person required to list the same, is herein truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of property of any person or body, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the annexed, and that in no case have I knowingly omitted to demand of any person of whom I was required by law to list, nor in any way connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation. So help me God."

SEC. 1017. Such assessor shall receive from said county a percentage of the assessed valuation returned by him subject to such reduction as may be made by the board of equalization, of not less than three-fourths of one mill on the dollar, nor more than three mills on the dollar, as said board of county commissioners may deem right and just; and it shall be the duty of the board of commissioners to provide for the payment of such sum as may be allowed said assessor, in money out of the contingent fund of said county.

NOTE.—See sections 454 and 455, ante.

DUTIES OF COUNTY COMMISSIONERS.

SEC. 1018. On or before the first day of February in each year the county commissioners shall provide the assessor with suitable blank forms for assessments, and such instructions as to insure full and uniform assessments and returns.

SEC. 1019. On the first Monday after the first day of January of each year after the year 1872, the board of county commissioners of each county shall levy the requisite taxes for the current year and for the year 1872. They shall levy such taxes on the first Monday of February.

SEC. 1020. The county commissioners shall constitute a board for the correction of the assessment roll, and on the third Monday in September, and at any time thereafter when it may become necessary, who shall meet at the county clerk's office, at the county seat, and sufficient public notice shall be given by the county clerk of the time and place of the meeting of such board of correction; and any person feeling aggrieved by anything in the assessment roll may apply to the board for the correction of any supposed error; and if, in the opinion of said board, any assessments are too low, they shall have power to increase such assessments, but shall notify the party or parties of their intention to increase such assessment; and if any person returned as refusing to render a list, or to be sworn thereto, can show good cause, the penalty herein provided may be remitted.

SEC. 1021. In addition to the tax required to be levied by the provisions of this article, there shall be levied by the board of county commissioners of each county, at the same time the *ad valorem* tax is levied by them, a tax of two dollars upon each male inhabitant of this Territory over the age of twenty-one years. Such tax shall be denominated a poor tax, and the money collected theron shall be set apart by the board of county commissioners as a fund exclusively for the support and maintenance of the poor of each county. It shall be the duty of the assessors of the several districts to collect the said poor tax in money, and in the manner provided for in this article for the collection of taxes; except that said taxes shall be collected and payable at any time after the same are levied. And the said assessors shall be allowed twenty per cent. on the amount collected by them on such poor taxes, in case they shall faithfully perform their duties in collecting said taxes, from each person in their respective districts liable therefor. For the purpose of collecting said poor taxes, it shall be the duty of the board of commissioners of each county to provide blank printed receipts for such poor tax, which shall have proper stubs with memorandum of name, amount, and date attached, and such blank receipts, or so many as may be necessary, shall be delivered by the clerk of said board of commissioners to the several assessors at the same time when the blank assessment lists are furnished to them; and each assessor shall receipt to the clerk for the number of blanks of poor tax receipts, respectively, received by him. The assessor shall give the proper receipt for each poor tax collected by him, and make the proper memorandum on the corresponding stub, and he shall, on the first Monday of each month, pay over to the county treasurer all moneys collected by him during the preceding month, and take the treasurer's receipt therefor, and return to the board of commissioners at each of their regular sessions, or at any other time when required by the board, all stubs of receipts given, all blank receipts still on hand, and the receipts of the treasurer for the money paid him; and the board shall compare the number of blanks received by such assessor with his stubs and blanks on hand, and ascertain if they tally; and, also, if the money collected has been paid to the county treasurer; and if the same be found correct, the assessor shall deliver up his remaining blank receipts, and therefor the clerk shall give the assessor, on the order of the board, a certificate of such settlement of such assessor with the board. The assessor shall be liable on his official bond for the non-performance of his duties in collecting said poor tax, and for the money collected therefor by him; and the board of county commissioners shall have power, if they deem it necessary, to require any assessor to give additional bond for performing his duties and paying over money collected on said poor taxes, in such sum as they shall designate.

NOTE.—As amended by Act May 30th, 1873.

DUTIES OF COUNTY CLERKS.

SEC. 1022. As soon as possible, after the taxes are levied, the clerk shall make out a tax list in tabular form and in alphabetical order, which tax list shall be made within twenty days after the returns of the assessor; having in a distinct column by itself, the amount of each different tax, and having one or more columns for all delinquent taxes, but instead of a column for the amount of personal property, the word "personal" may be written across the column after the name and amount are carried into the column of value. Such list may be in the following form:

Names of owners.	Part of section.	Section.	Township.	Range.	Acres.	Name of town.	Lots.	Block.	Value.	County tax.	Territorial tax.	School tax.	Road tax.

SEC. 1023. An entry is required to be made upon the tax list showing what it is, and for what district, and the year it is, and the county clerk shall attach to the list his warrant under his hand and official seal, in general terms, requiring the treasurer to collect the tax therein levied according to law, and no informality in the above requirements shall render any proceedings for the collection of taxes illegal, and such list shall be full and sufficient authority for the treasurer to collect all taxes contained therein.

SEC. 1024. Immediately after the assessment roll is corrected, the county clerk shall make out an abstract thereof, containing the whole amount of each species of property, and the value of the same, together with the total valuation of all property assessed, which abstract said clerk shall transmit forthwith to the auditor of the Territory.

SEC. 1025. If on the assessment roll, or on the tax list, there be an error in the name of a person taxed, the name may be changed, and the tax collected from the person intended, if he be taxable, and can be identified by the tax collector or assessor.

SEC. 1026. The treasurer shall, within twenty days from the time he shall receive the assessment roll from the clerk, direct to each taxpayer of his county a written or printed notice of the amount of tax due from such taxpayer, and the time the same becomes due. Such notice shall be directed to the nearest post office to which said taxpayer resides. Printed blanks for said notices and postage stamps for the same, shall be furnished said treasurer by the board of county commissioners. No other demand for taxes shall be necessary, but it shall be the duty of every person owing taxes to pay the same to the treasurer of the county, at his office, and if any such taxpayer shall fail or refuse to pay the taxes assessed against him, on or before the first day of December following, the levy thereof of ten (10) per cent. of such taxes shall be added thereto, and collected as a portion of said taxes, and it shall be the duty of the tax collector immediately after the said first day of December, to seize any personal property belonging to or which may have been assessed to any taxpayer who shall then be delinquent, and sell the same, as provided in section 1045: *Provided,* That nothing herein shall be so construed as to prohibit the collector from seizing and selling personal property at any time before the first day of December. But it shall be his duty at any time when there shall appear to be danger of the removal of property on which taxes are unpaid, from the county, to seize and sell a sufficient amount of the same to satisfy the taxes thereon, together with the costs of seizure and sale.

NOTE.—Act of February 12th, 1874.

SEC. 1027. If any taxpayer, against whom any tax may be levied, shall remove or attempt to remove his property from the county where such tax was levied, the treasurer of such county shall sue for and collect such tax in the name of the county, in the manner provided by law for the collection of debts.

SEC. 1028. In case where sufficient personal property, liable to seizure, cannot be found to pay the tax assessed against any person or company, the treasurer may sue for and collect such tax by attachment, garnishment or otherwise.

SEC. 1029. On or before the third Monday of January, in each year, the treasurer is directed to offer at public sale, at the court house in his county, all lands on which the taxes levied the preceding, or any previous year, still remain unpaid; but such sale shall not be void if not made till after the day named.

NOTE.—Act February 19th, 1879.

SEC. 1030. The treasurer shall give notice of the sale of real property by publication thereof, once a week, for four weeks, in a newspaper in his county, if there be one of weekly issue, the first of which shall be at least four weeks before the sale, and by a written notice posted on the door of the court house, or building commonly used therefor, for four weeks before the sale; and if there be no such newspaper published in the county, the like notice shall be given by posting one written notice the above length of time, in some public place in each township or precinct in which any land to be sold is situated, and one on the court house door. Such notice shall contain a notification that all lands on which the taxes of the preceding year or years, naming it, have not been paid, will be sold, and the time and place thereof; with a list of the lands. Ten per cent. upon the amount of the delinquent taxes due shall be added when the lands are advertised.

SEC. 1031. Such sale shall take place between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, and be adjourned from day to day, Sundays excepted, until all the lands are sold.

SEC. 1032. At the first meeting of the board of county commissioners after such date, the treasurer is required to file in the county clerk's office, a return of his sale of lands, retaining a copy in his office, showing the lands sold, the names of the owners so far as known, the names of the purchasers, and the sums paid by them, and also a copy of the notice of the sale, with a certificate of the service, verified by an affidavit, and such certificate shall be evidence.

SEC. 1033. The person who offers to pay the amount due on any parcel of land, for the smallest portion of the same, is to be considered the highest bidder, and when such portion constitutes one-half or more of the parcel, it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided in each case lengthwise, by a line parallel with the proper lines of lots; if the portion be less than one-half, the tract is to be taken from the southeast corner in a square form, as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualifications: The homestead is liable to be sold for no tax, save that which is due on the same exclusively, and the above directions concerning the division of a tract of land shall be modified so as to meet this requirement, and to that end the quantity of land bid for may be obtained by drawing division lines in any direction or form, so as to avoid the homestead, and when the homestead constitutes a part of the tract sold, and is not yet ascertained, the court may, in the action hereafter authorized, at the suggestion of either party, cause a proceeding to be had, similar to that required for a mechanics' lien. For the ascertainment of the homestead, and in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold, and set it apart from the homestead.

SEC. 1034. Should any person so bidding fail to pay the amount due, the treasurer may again offer the land for sale; if it has closed, he may again advertise it specially, and by description, by one written notice posted for two weeks in the civil township in which the land lies, and one such notice on the court house door, or the treasurer may recover the amount bid by civil action, brought in the name of the county, in the township or precinct where the county seat is situated.

SEC. 1035. The county treasurer shall make out, sign and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser, as the same was described in record of sales, and also how much and what part of each tract or lot was sold, and stating the amount of each kind of tax, interest and cost, for each tract or lot for which the same was sold, as described in record of sales, and that payment has been made therefor. If any purchaser shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate.

SEC. 1036. Such certificate of purchase shall be assignable by indorsement, and on assignment thereof shall vest in the assignee or his legal representative all right and title of the original purchaser.

SEC. 1037. Real property sold under the provisions of this article may be redeemed at any time before the expiration of one year from the date of the sale, by the payment to the treasurer of the proper county, to be held by him subject to the order of the purchaser, of the amount for which the same was sold and subsequent taxes, and sixty per cent. interest per annum on said amount, and on subsequent taxes, unless such subsequent taxes have been paid by the person or persons for whose benefit the redemption is made, which fact may be shown by the treasurer's receipt.

Sec. 1038. The county treasurer shall, upon application of any party to redeem any real property sold under the provisions of this article, and being satisfied that such party has the right to redeem the same, and upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale, substantially as contained in certificate of sale, the date of redemption, the amount paid, and by whom redeemed; and he shall make the proper entries in the book of sales in his office, and shall receive one dollar for such services.

Sec. 1039. Immediately after the expiration of the time allowed for the redemption of any land sold for taxes under the provisions of this article, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of purchase. The county treasurer is required to demand two dollars for each deed made by him on such sale, but any number of parcels of land bought by one person, may be included in one deed, as may be desired by the purchaser.

Sec. 1040. Deeds executed by the treasurer shall be substantially in the following form:

"*Know all men by these presents,* That, whereas, the following described real property, to-wit: (here follows the description) situated in the county of ———, and Territory of Montana, was subject to taxation for the years A. D. ———; and whereas, the taxes assessed upon said real property for the year or years aforesaid, remained due and unpaid at the date of the sale hereinafter named; and whereas, the treasurer of said county did, on the ——— day of ———, A. D. 18—, expose at public sale, at the court house, in the county aforesaid, in substantial conformity with all the requirements of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest, and cost then due and remaining unpaid on said property; and whereas, at the time and place aforesaid, A B, of the county of ———, and ———, of ———, having offered to pay the sum of ——— dollars and ——— cents, being the whole amount of taxes unpaid on said property (here follows a description of the property sold), which was the least quantity bid for, and payment of such sum having been made by him to the said treasurer, the said property was stricken off to him at that price; and whereas, the said A B did, on the —— day of ——, A. D. 18—, duly assign the certificate of the sale of the property aforesaid, and all his right, title, and interest to said property, to E F, of the county of ———, and ——— of ———; and whereas, the time of redemption having elapsed since the date of said sale, and the said property has not been redeemed therefrom as provided by law. Now, therefore, I, C D, ——— of the county aforesaid, for and in consideration of the sum, to the ——— paid as aforesaid, and by virtue of the statute in such case made and provided, have bargained and sold, and by these presents do grant, bargain, and sell unto the said A B, his heirs and assigns, the real property last here described. To have and to hold unto him the said A B, his heirs and assigns forever.

"In witness whereof, I, C D, ——— as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name on this ——— day of ———, A. D. 18—. C D."

TERRITORY OF MONTANA, } ss.
——— *County.* }

"I hereby certify, that before me, ——— in and for said county, personally appeared the above named C D, ——— of said county, at the date of the execution of the above conveyance, and to me known to be the identical person whose name is affixed to, and who executed the above conveyance, as treasurer of said county, and acknowledged the execution of the same to be his voluntary act and deed as ——— of said county, for the purposes therein expressed.

"Given under my hand and seal, this —— day of ——, A. D., 18—."

SEC. 1041. When, by the mistake or the wrongful act of the county treasurer, land has been sold, the county is to hold the purchaser harmless by paying him the amount of principal and interest to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties will be liable for the amount to the county on his bond, or the purchaser may recover directly from the treasurer.

SEC. 1042. Each county treasurer shall, at the expiration of every three months, render an account of and cause to be paid over to the Territorial treasurer, the amount of all moneys collected for Territorial purposes, and shall complete the collection of all lists delivered to him, and at the expiration of each fiscal year, and at the expiration of his term of office shall make final settlement with the county commissioners of his county, who shall report to the Territorial treasurer immediately thereafter a correct statement of the amount found due the Territory, and the county treasurer shall remit to him such amount. No mileage shall in any case be hereafter allowed to county treasurers.

NOTE.—Act February 9th, 1873.

SEC. 1043. If any county treasurer shall fail to collect or render his account, as provided in the foregoing section, it shall be the duty of the Territorial treasurer, and he is hereby authorized and required, to commence proceedings for a forfeiture of his bond, and if such treasurer should fail or refuse to prosecute them, any taxpayer in the Territory may commence such prosecution; that the first day of December in each year shall be the end of the fiscal year for county purposes, and the county treasurer shall, before retiring from office, settle in full with the county commissioners and the Territorial auditor and treasurer.

SEC. 1044. The treasurer of each county in this Territory shall be, by virtue of his office, collector of taxes therein, except of the poor tax, as hereinbefore provided, and shall perform such other duties as are, or may be hereafter, prescribed by law.

SEC. 1045. The treasurer shall sell any and all personal property, or so much thereof as may be necessary, that may be seized by him for non-payment of taxes, at public sale, conducted openly, and shall be sold after notice, published as required by law for the sale of personal property under execution.

SEC. 1046. The provisions herein made for assessment districts, and district assessors of the counties, and for assessments by such district assessor shall not apply or be in force until provision shall be made by law for the election or appointment and qualification of such district assessor, but the assessor of the several counties, as now provided for by law, shall make the assessment in their respective counties for the year 1872, in accordance with the provisions of this article, and shall perform for their respective counties the same duties herein prescribed for district assessor for their respective districts.

NOTE.—Preceding chapter, except where otherwise specially noted, is from Act January 12th, 1872.

ARTICLE II.

TAXATION OF MINES.

Sec. 1047. *Annual statements of persons owning or working mines.*
Sec. 1048. *Credit for expenditures; improvements not exempt.*
Sec. 1049. *Annual tax on net proceeds.*
Sec. 1050. *Duty of assessor upon failure of owner to make statement.*
Sec. 1051. *Limitation to assessable value of mines, etc.*

SEC. 1047. That every person, corporation, or association engaged in mining upon any quartz vein or lode, or placer mining claim, containing gold, silver, copper or lead, is hereby required, between the first and tenth days of August in each year, to make out a statement of the gross yield of the above named metals from each of such mine or mines being owned or worked by such person, corporation, or association during the year next preceding the first day of August in each year, and the value thereof, which said statement shall be verified by the oath of such person, or the superintendent or managing agent of such corporation or association, and deliver the same to the assessor of the county in which such mine or mines are situated, between the dates above mentioned. That said statement, verified as above provided, shall also contain a true and correct amount of the actual expenditures of money and labor in and about extracting such ore, the reduction thereof, and the conversion of the bullion derived therefrom into money or its equivalent during such year.

SEC. 1048. That in making the statement of the expenditures mentioned in the foregoing section, such person, corporation or association, shall be allowed to include therein all sums of money that have been expended for necessary labor, machinery, supplies of every kind and character needed and used in his or its mining operations, for improvements actually necessary in and about the working of such mine or mines, reducing the ores therefrom, and expended in and about the construction of mills or reduction works used and operated in connection with said mine or mines, for the purpose of reducing and extracting the precious metals therefrom, and shall not include any money invested in said mines or improvements made on the same during any year except the year immediately preceding such statement: *Provided*, That nothing herein contained shall exempt such improvements, mills, reduction works and supplies from taxation as now provided by law:

Provided, That the expenditures referred to herein shall not include the salaries, or any portion thereof, of the officers of any corporation not actually engaged in the working of such mine or mines, or personally superintending the management thereof.

SEC. 1049. That a tax shall be levied annually upon the net proceeds of all mines above named, such net proceeds to be ascertained and determined in the manner provided in the foregoing sections of this article, and that such tax shall be collected and the payment thereof enforced as now provided by law for the collection of other taxes.

SEC. 1050. That if any person, corporation or association engaged in the kind of mining named in this article, shall refuse or neglect to make and deliver to the assessor of the county where his or their mines are situated, the statement mentioned in sections 1047 and 1048 of this article, during the time herein specified, the assessor of such county is hereby authorized and empowered, and it is hereby made his duty, to proceed to fix and assess, according to his best knowledge and information, the amount upon which the tax mentioned in section 1049 of this article shall be levied, in the manner now provided by law relating to the assessment of other property, and shall add a like penalty of twenty per centum to the amount and value thereof.

SEC. 1051. That from and after the passage of this article, no direct tax shall be levied upon any placer claim, quartz lead, or lode, except to the extent of the price paid for any mining claim in obtaining patent therefor from the government of the United States, and the only taxation of the proceeds thereof shall be that provided in this article: *Provided*, That this article shall not be so construed as to exempt from taxation improvements consisting of buildings, erections, or machinery, placed upon any quartz lead or lode, or used in connection therewith: *Provided further*, That the assessor shall, at the time of assessing any person, firm, corporation or association, have the power to examine the books and accounts of said person, firm, corporation or association, to fully satisfy said assessor that he has been furnished with a truthful report; and if satisfied from such examination that the report is false, he shall assess the same at the true amount of the net proceeds, so near as he can arrive at the same: *Provided*, That no one, by virtue of the provisions of this article, shall be deprived of his right to appear before the proper board of equalization as other taxpayers under existing laws.

CHAPTER LIV.

ROADS AND HIGHWAYS.

ARTICLE I.

POWERS OF COUNTY COMMISSIONERS, ROAD SUPERVISORS, ETC.

Sec. 1052. *County commissioner's authority over county roads.*
Sec. 1053. *Petition to lay out, alter or locate road.*
Sec. 1054. *Notice that petition will be presented.*
Sec. 1055. *Order appointing viewers and surveyor.*
Sec. 1056. *Oath and duties of viewers and surveyors.*

Sec. 1057. Viewers may administer oath. Survey unnecessary; when.
Sec. 1058. Appointment and report of persons to assess damages.
Sec. 1059. Commissioners may refuse to open road unless damages paid by petitioners.
Sec. 1060. Appeal from assessment of damages to district court.
Sec. 1061. Width of county roads.
Sec. 1062. Proceedings if party through which road passes desires to change the same.
Sec. 1063. Penalty if viewer refuses to act.
Sec. 1064. Petition for private road leading to public road.
Sec. 1065. Gates on roads.
Sec. 1066. Report of viewers on private roads and of damages.
Sec. 1067. Commissioners to divide county into road districts.
Sec. 1068. Of the appointment or election of road supervisors.
Sec. 1069. Qualifications, term of office and removal of supervisor.
Sec. 1070. Road tax, labor in lieu thereof and exemptions from.
Sec. 1071. Labor on roads, penalty for refusal.
Sec. 1072. Eight hours a day's work; use of teams and tools.
Sec. 1073. If labor of district insufficient, appropriation to be made from road fund.
Sec. 1074. Drains and ditches; plows, scrapers, etc.
Sec. 1075. Power of supervisor to remove obstructions.
Sec. 1076. Certificate for extra labor in removing obstructions.
Sec. 1077. Compensation and report of supervisor.
Sec. 1078. Presumptions of law in an action for delinquent road tax; no exemption from execution.
Sec. 1079. Of neglect of supervisor and misdemeanor in office.
Sec. 1080. Compensation of surveyor and viewers.
Sec. 1081. Parallel roads, timber roads, and roads to water.
Sec. 1082. Guide or finger boards.

Sec. 1052. That all county roads shall be under the supervision of the board of county commissioners of the county wherein the said road is located, and no county road shall be hereafter established, nor shall any such road be altered or vacated in any county in this Territory, except by authority of the county commissioners of the proper county.

Sec. 1053. All applications for laying out, altering, or locating county roads, shall be by petition to the county commissioners of the proper county, signed by at least twelve householders of the county, residing in the vicinity where said road is to be laid out, altered, or located, which petition shall specify the place of beginning, the intermediate points, if any, and the place of the limitation of said road.

Sec. 1054. When any petition shall be presented for the action of the county commissioner for the laying out, alteration, or vacating of any county road, it shall be accompanied by satisfactory proof that notice has been given by advertisement, posted on the front door of the county clerk's office, and also in three public places in the vicinity of said road or proposed road, thirty days previous to the presentation of said petition to the county commissioners, notifying all persons concerned that application will be made to the said county commissioners, at their regular session, for laying out, altering, or vacating such road, as the case may be.

SEC. 1055. Upon the presentation of such petition, and proof that notice has been given, as provided in the last section, the county commissioners shall, if they deem the proposed road or alteration of public utility, appoint three disinterested householders of the county as viewers of said road, and a skillful surveyor to survey the same, if deemed necessary by the county commissioners, and shall issue an order directing said viewers and surveyor, if appointed, on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view, survey, if so ordered, and lay out or alter said road.

SEC. 1056. That it shall be the duty of the viewers and surveyors, appointed as aforesaid, after receiving at least five days previous notice by one of the petitioners, to meet at the time and place specified in the order of the county commissioners, aforesaid, or within five days thereafter, and after taking an oath or affirmation, faithfully and impartially to discharge the duties of their appointments, shall proceed to view, survey if necessary, and lay out or alter said road, as prayed for in the petition, as near as in their opinion a good road can be made at a reasonable expense, taking into consideration the utility, convenience, inconvenience, and expense which will result to individuals as well as to the public, if such road shall be established and opened or altered. The surveyor, if appointed, shall survey, under the direction of the viewers, and shall make out and deliver to one of the viewers a certified return of the survey of said road, and a plat of the same; and the viewers, or a majority of them, shall make and sign a report in writing, stating their opinion in favor of or against the establishment or alteration of such road, and set forth the reasons of the same, which report, together with the plat and survey of said road or alteration, if made, shall be delivered to the county clerk by one of the viewers, on or before the first day of the session of the board of county commissioners next ensuing; and it shall be the duty of the county commissioners, on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting, and if no remonstrance or petition for damages be filed, and the county commissioners being satisfied that such road will be of public utility, will order the report of the viewers, survey, and plat to be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue an order directing said road to be opened.

SEC. 1057. That in all cases where any oath or affirmation is required to be taken by any person under the provisions of this article, the same may be administered by one of the viewers, who has been previously sworn: *Provided*, That it shall not be necessary to survey any county road, new road, or alteration in roads, if the county commissioners so direct.

SEC. 1058. If any person through whose lands any county road may be viewed or marked out, shall feel that he or she would be injured by the opening of the same, such person may make complaint thereof in writing to the county commissioners at the time the report of the viewers appointed to view said road is received; and if such complaint be made, the county commissioners shall appoint three disinterested householders of the county, who shall meet at such time as may be designated by the commissioners, or at such time as may be agreed upon by such householders, and after having been duly sworn or affirmed to discharge their duty faithfully and impartially, shall proceed and view said proposed road the whole distance through the premises of the complainant, and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the county commissioners at the next regular session.

SEC. 1059. If the county commissioners are satisfied that the amount of damages so assessed is just and equitable, and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, the commissioners shall order the same to be paid to the complainant out of the county road fund; but if in the opinion of the county commissioners such proposed road is not of sufficient importance to the public to cause damages to be paid by the county, they shall refuse to establish the same as a public highway, unless the expense or damages, or such part thereof as they may think proper, shall be paid by the petitioners.

SEC. 1060. Any complainant who may conceive himself aggrieved by the assessment of damages as prescribed in the last two sections, may, within thirty days after such report is adopted by the county commissioners, appeal therefrom to the district court of the proper county; such appeal shall be taken to the district court in the same manner as appeals from justices of the peace, and if the appellant shall fail to recover a judgment for fifty dollars more than the amount appealed from, he shall pay all costs of appeal.

SEC. 1061. All county roads shall be sixty feet in width, unless the commissioners shall, upon the prayer of the petitioners for the same, determine on a less number of feet in point of width.

SEC. 1062. If any person or persons, through whose lands any public highway is or may be established, shall be desirous of changing such road through any other part of his or their lands, such person or persons may, by petition, apply to the county commissioners of the proper county to permit him or them to turn such road through any other part of his or their lands on as good ground, and without materially increasing the distance, without injury to the public; and on receipt of such petition, accompanied by a sufficient bond to pay the costs and expenses to be incurred thereby, the commissioners may appoint three disinterested householders as viewers, and a surveyor if necessary, who, or a majority of such reviewers, shall proceed to review the ground over which the road is proposed to be changed, and ascertain the distance such road will be increased by the proposed alteration, and make out a report in writing, stating their opinions as to the utility of making such alterations, and if the viewers, or a majority of them, shall report to the county commissioners that the prayer of the petitioner or petitioners is reasonable, and, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road, for the convenience of travelers, the commissioners shall declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is not embraced in the new, and the person or persons petitioning for the alteration shall pay all costs and expense of view, survey if ordered, and return of such alteration.

SEC. 1063. If any viewer or viewers shall refuse or neglect to perform the duties required by this article, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding ten dollars, to be recovered by an action before a justice of the peace of the proper county, which fine when collected shall be paid over without delay into the county treasury for the benefit of the road fund.

SEC. 1064. Any person whose land shall be so situated that it has no connection with any public road, may make application in writing to the county commissioners of his county at a regular session, for a private road leading from his premises to some convenient public road, and thereupon the said commissioners shall appoint three disinterested householders of the county as viewers, and cause an order to be issued directing them to meet on a day named in such order, to view and locate a private road according to the application, and to assess the damages to be sustained thereby, and after being duly sworn or affirmed, faithfully and impartially to discharge the duties of their appointment, and after at least three days notice given to all persons through whose lands such private road is to be located, such viewers shall proceed to locate and mark out a private road twenty feet in width, from some certain point on the premises of the applicant, to some certain point on the public road, so as to do the least possible damage to the lands through which such private road is located, and they shall also, at the same time, assess the damages sustained by the person or persons owning such lands.

SEC. 1065. The viewers appointed in accordance with the provisions of the preceding sections of this article shall have power to determine in all cases whether or no gates shall be placed at proper points on said road, and assess damages in accordance with such determination.

SEC. 1066. The viewers so appointed, or a majority of them, shall make a report to the county commissioners, at the next regular session, of the private road so located by them, and also the amount of damages, if any, assessed by them, and the person or persons entitled to such damages; and if the commissioners are satisfied that such report is just, and after payment by the applicant of all costs of locating such road, and the damages assessed by the viewers, the commissioners shall order such report to be confirmed, and declare such road to be a private road, and the same shall be recorded as such; and any person aggrieved by the assessment of damages may appeal within thirty days after such confirmation of the report, to the district court.

SEC. 1067. The several county commissioners shall, as often as they deem necessary, but not oftener than once a year, divide their respective counties, or any part thereof, into suitable and convenient road districts; and cause a brief description of the same to be entered on the county records.

SEC. 1068. The several boards of county commissioners shall at their next regular meeting in March appoint a supervisor for each road district in the county, and thereafter at every general election there shall be elected by the qualified voters of each district a supervisor thereof, who shall hold his office for the term of one year, beginning March first next ensuing after his election. The county clerk is hereby required to immediately notify each supervisor of his appointment or election, as the case may be, and the said supervisor shall qualify within twenty days after his appointment or election. The county commissioners are hereby authorized to fill all vacancies that may occur in said office.

SEC. 1069. Each supervisor shall hold his office for one year unless sooner removed, and shall take an oath to faithfully discharge the duties of his office, and shall enter into an undertaking to the county with one or more sureties, to be approved by the county commissioners, in any sum specified by them, not to exceed one thousand dollars, to the effect that he will faithfully account for all moneys collected by him and perform the duties of his office according to law. The commissioners shall have power at any time to remove from office any supervisor who shall fail, neglect or refuse to perform the duties of his office.

SEC. 1070. There shall be levied and collected on all taxable property in the county the sum of not less than one mill nor more than two mills on the dollar; also a special road tax of three dollars on each able-bodied man between the ages of twenty-one and forty-five years residing in each district: *Provided,* That any person liable to pay road tax, either special or *ad valorem,* may work out such tax under the directions of the supervisor of the district where such person resides, and shall be allowed for such work the sum of three dollars per day; *and provided further,* that if the special road tax in any road district is sufficient to keep the public roads in good order, the supervisor may refuse to receive labor for the *ad valorem* road tax, and the same shall be paid into the county treasury for the benefit of the general road fund. The several county treasurers are hereby authorized and empowered to collect all road tax, both special and *ad valorem,* levied in each year as required by law for the collection of revenue: *Provided,* That any person producing the supervisor's certificate for labor done and performed, or for material furnished on any road or bridge, by order of said supervisor, shall be allowed the same on his road tax: *Provided also,* That no special road tax shall be required from any member of any organized fire company of any village or city.

SEC. 1071. The supervisor must notify every person within his road district, subject to road labor as aforesaid, to perform one day's work in each year upon the public roads, and if any person subject to road labor as aforesaid shall, after three days' notice, either personally, or by writing left at his usual place of abode, by the supervisor or any other person under his direction, neglect or refuse to attend by himself or suitable substitute, at the time and place designated by the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall pass his time in idleness or inattention to the labor or duties assigned him, every such delinquent shall thereby become liable for the amount of his road tax in money, and if such person has no real estate assessed in his name, it shall be the duty of the supervisor to make complaint before the probate judge or some justice of the peace, setting forth the facts of such notice and refusal to perform the required labor or to pay the money, when, if such charge be sustained after a hearing, the delinquent shall be deemed guilty of a misdemeanor and shall be fined in the amount due from him for road tax together with all costs. Such fine to be collected as in ordinary criminal actions, and to be paid to the supervisor for the use of the road fund in his district.

Sec. 1072. Every person notified to labor on the public roads, under the provisions of this article, shall be required to appear at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and work industriously and diligently, doing at least eight hours faithful labor in each day at such work, and in such manner as shall be directed by the supervisor; and such supervisor may, if he deem it necessary, order any resident of his district, from whom road work or tax is due and owing, to furnish a team of horses, mules, or oxen, and wagon, cart, scraper, or plow, to be employed or used on the roads under the direction of such supervisor, and shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper, or plow, in discharge of any labor due from such person.

Sec. 1073. The supervisor of roads shall open, or cause to be opened, all public roads which may have been, or may hereafter be, laid out and established according to law, in any part of his road district, and shall keep the same in good repair, and if the labor in his district is not sufficient for that purpose, the supervisors shall have power and authority to call out all persons liable to road tax for one more day's labor, and if such labor is not sufficient, the board of commissioners are hereby authorized, at their discretion, to appropriate from the general road fund any amount they may see fit for the use and benefit of such district.

Sec. 1074. The road supervisor shall have authority to cut, open or construct such drains and ditches as he shall deem necessary for the making and preserving of such roads, doing as little injury as may be to the lands; and any person stopping or obstructing the drains or ditches so made shall forfeit the sum of twenty dollars, to be recovered by the supervisor in a civil action as before provided. If any person shall feel aggrieved by the act of any supervisor cutting or carrying away any timber or stone as aforesaid, he may make complaint in writing to the county commissioners, who shall allow any damages they may see fit, and pay the same out of the road fund. The county commissioners may authorize the supervisors to purchase any plows, scrapers, or other intruments that they may think proper, for the use of the road district, and pay for same out of the general road fund.

Sec. 1075. If, at any time during the year, any public road shall become obstructed by snow, or from any other cause, or any bridge shall need repairing, or become dangerous for the passage of teams or travelers, the supervisor of the road district, upon being notified thereof, shall forthwith cause such obstruction to be removed, or bridge repaired, for which purpose he shall immediately order out such number of inhabitants of his district as he may deem necessary to remove such obstruction or to repair such bridge; and all persons so ordered out shall, after having received one day's notice, be subject to the same restrictions and liable to the same penalties as if ordered out under section 1072 of this article.

Sec. 1076. In all cases under the preceding section, where any person has performed labor on the public roads in removing obstructions or repairing bridges, the supervisor shall give such person a certificate, specifying the amount of extra labor so performed, which certificate may be transferred and received in discharge of the labor of any other person within the same district to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads in such district at any subsequent year for the amount of labor specified therein.

Sec. 1077. Every supervisor of roads shall receive for each day necessarily employed in the performance of any of the duties required by this article the sum of three dollars, to be paid out of the general road fund, and it shall be the duty of the supervisor to report to the board of county commissioners at their regular meetings in September in each year, a sworn statement of all moneys collected by them; they shall also present a sworn statement of the number of days of work done in their district for each year, and by whom performed.

Note.—Act of February 11th, 1876.

Sec. 1078. In an action by the supervisor to recover a delinquent special road tax as herein provided, the presumption shall be that the defendant was duly warned to work the road, and failed and neglected so to do, and that he had no real property listed to him during the current year. No property is exempt from execution and sale for a delinquent road tax.

Sec. 1079. Any supervisor of roads who shall neglect or refuse to perform the several duties enjoined upon him by this article, or who shall, under any pretense whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for money paid or labor performed, unless the money shall have been paid or the labor performed prior to the giving or signing such receipt or certificate, shall forfeit for each offence not less than five nor more than twenty dollars, to be recovered before any court having jurisdiction; and it shall be the duty of the county commissioners to sue for the same in the name of the county.

Sec. 1080. Every person employed as surveyor under this article shall receive as compensation the sum of seven dollars per day, and each viewer the sum of three dollars per day for each day necessarily employed in such labor in surveying or laying out roads under the supervision of the county commissioners.

Sec. 1081. County roads running parallel shall not be nearer than one mile, and upon the presentation of a petition signed by at least five freeholders of any neighborhood praying for passage to the various water courses for stock purposes, the commissioners may, at their discretion, establish such passage-way as provided for in section 1064 of this act. This section shall also apply to the opening and establishment of neighborhood roads running to timber.

Sec. 1082. Every supervisor shall erect or cause to be erected and keep up at the forks of every highway and every crossing of public roads within his district, a guide or finger board, containing an inscription in legible letters, directing the way and specifying the distance to the next town or public place situated on each road respectively.

Note.—Act February 12th, 1874, except where otherwise noted.

ARTICLE II.

TOLL ROADS AND BRIDGES.

Sec. 1083. *County commissioners prohibited from authorizing the collection of toll.*
Sec. 1084. *Contracts declared void.*
Sec. 1085. *Toll roads without charters may be declared public highways.*
Sec. 1086. *Refusal to surrender, or destroying road, declared a misdemeanor.*
Sec. 1087. *Forfeiture of franchise; penalties.*

Sec. 1083. That the county commissioners of the several counties of the Territory of Montana shall not be permitted to authorize any person or persons, company or corporation, to collect toll on any road or bridge for the benefit of such person or persons, company or corporation.

Sec. 1084. If there shall be any contract or agreement between county commissioners and any person or persons, company or corporation, by which the same collect toll, such contract or agreement is hereby revoked and made null and void.

Sec. 1085. All public roads or highways claimed by any person or persons, company or corporation, on which toll is collected or taken without having a charter for the same, granted by the legislative assembly of the Territory of Montana, may be taken possession of by the county commissioners of the county in which the same may be; which road shall thereafter be a free public highway.

Sec. 1086. Any person or persons, company or corporation, who shall refuse to surrender such road to the county commissioners of the county in which the same may be, for the use and benefit of the public travel, or shall in any way obstruct or cause to be obstructed, destroy or cause to be destroyed, any such road, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than one hundred dollars, or more than one thousand dollars, or imprisonment in the county jail not less than three months, or more than one year, or both such fine and imprisonment, at the discretion of the court.

Sec. 1087. Any person or persons within this Territory, now in the possession of any road or bridge as agent of any corporation, or as owner of any franchise thereon, who shall permit the same to become and remain out of repair, shall forfeit such franchise; and any such agent or owner who shall obstruct or impair any such road or any bridge thereon, or shall interfere with any such bridge so that the same shall not be convenient and safe for all public travel, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment; and all roads, highways and bridges now or heretofore held by virtue of any charter, franchise or other corporate right, upon the expiration of such franchise, are hereby declared public highways, and with all the improvements thereon, shall be, from the time of the expiration of such franchise, under the direction of the board of county commissioners of the county in which such road or bridge or other improvement may be.

Note.—Act of February 13th, 1874.

CHAPTER LV.

SCHOOLS.

ARTICLE I.

MONTANA SCHOOL LAW.

Sec. 1088. *Of the office and duties of "superintendent of public instruction."*
Sec. 1089. *Forms to be prepared by the superintendent.*
Sec. 1090. *To visit the schools and traveling expenses.*
Sec. 1091. *Place of office, and salary of.*
Sec. 1092. *Annual appropriations for necessary expenses.*
Sec. 1093. *Delivery of archives to successor.*
Sec. 1094. *Duty of county treasurer.*
Sec. 1095. *Of the office of county superintendent.*
Sec. 1096. *Of apportionments by county superintendent.*
Sec. 1097. *Duties of county superintendent.*
Sec. 1098. *Forfeiture for failure to report.*
Sec. 1099. *Power to administer oaths without fee.*
Sec. 1100. *Power to oppoint trustees and clerks, and to fill vacancies.*
Sec. 1101. *Boundaries of school districts.*
Sec. 1102. *Compensation and expenses.*
Sec. 1103. *New districts formed, old ones changed, and persons transferred to other districts.*
Sec. 1104. *Share of school moneys and taxes in new district.*
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Sec. 1109. *Term of office and qualification of trustees.*
Sec. 1110. *Organization of new district and election of officers.*
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Sec. 1130. *Taxes and fines for school support.*
Sec. 1131. *Reports of county clerk, clerk of district court, probate judges and justices of the peace, to county superintendent.*
Sec. 1132. *Establisment of "high schools."*
Sec. 1133. *Taxes for additional school facilities.*
Sec. 1134. *Levy and collection of such taxes.*
Sec. 1135. *Apportionment of school moneys.*
Sec. 1136. *Purposes for which school moneys to be used.*
Sec. 1137. *No district entitled to moneys unless teacher hold certificate.*
Sec. 1138. *District entitled to no moneys unless three months' school held.*
Sec. 1139. *School officer to deliver to successor all property of his office.*
Sec. 1140. *Official oath of school officer.*
Sec. 1141. *Trustees not to be interested in contracts.*
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Sec. 1146. *Disputes referred to county superintendent, appealed to Territorial superintendent.*
Sec. 1147. *School year.*
Sec. 1148. *Printing and binding under this act.*
Sec. 1149. *"Montana school law."*

SEC. 1088. A superintendent of public instruction shall be appointed by the governor, by and with the advice and consent of the legislative council, and shall enter upon the duties of his office on or before the twentieth day after his appointment, and shall hold office for the term of two years, or until his successor is appointed and qualified; and shall execute a bond in the penal sum of two thousand dollars, with two good and sufficient securities to be approved by the secretary of the Territory, conditioned upon the faithful discharge of his official duties. The superintendent of public instruction shall have power to adopt a course of studies and rules and regulations for all public schools in the Territory, and shall have and use a seal, and authorize the printing of all regulations and circulars necessary to carry their provisions into effect, and shall report to the governor biennially on or before the first day of December of the years in which the regular sessions of the legislature are held. The governor shall transmit said report to the legislature, and, whenever it is ordered printed, a sufficient number of copies shall be delivered to the superintendent of public instruction, to furnish two copies to be deposited in the Territorial library, and one copy to each superintendent of common schools, to be held by him as public property, and delivered to his successor in office, and one copy to each local school officer within the Territory. Said report shall contain a statement of the condition of the public schools in the Territory, full statistical tables by counties, showing, among other statistics, the number of school children in the Territory, the number attending public schools, the average attendance, the number attending private schools, and the amount raised by county and district taxes or from other sources of revenue for school purposes, the amount expended for salaries of teachers and for building and furnishing school houses, and the statement of the plans for the management and improvement of schools.

SEC. 1089. The superintendent of public instruction shall prepare and cause to be printed suitable forms for making all reports and conducting all necessary proceedings under this article, and shall transmit them to the local school officers and teachers, who shall be governed in accordance therewith. He shall furnish each superintendent of common schools with suitable diplomas and certificates, and shall prepare a school register, which shall be furnished to each school and school district in the Territory.

SEC. 1090. It shall be the duty of the superintendent of public instruction to travel in the different counties of the Territory where common schools are taught, so far as possible, without neglecting his other official duties, during at least three months in each year, for the purpose of visiting schools, of consulting with county superintendents, and of addressing public assemblies on subjects pertaining to public schools; and his necessary traveling expenses, not exceeding three hundred dollars in any one year, shall be paid out of any funds in the treasury not otherwise appropriated.

SEC. 1091. The superintendent of public instruction shall keep his office at some place where there is a post office, and he shall receive a salary of twelve hundred dollars per annum, which shall be paid quarterly out of the Territorial treasury.

SEC. 1092. All necessary expenditures of money incurred by the superintendent of public instruction, for rent, fuel, postage, printing, expressage, not exceeding two hundred dollars in any one year, shall be paid out of any fund in the treasury not otherwise appropriated, and the Territorial auditor is hereby authorized to issue his warrant on the treasurer for the same.

SEC. 1093. The superintendent shall, at the expiration of his term of office, deliver over, on demand, to his successor, all property, books, documents, maps, records, reports, and other papers belonging to his office, or which may have been received by him for the use of his office.

SEC. 1094. It shall be the duty of the county treasurer of each county:

First. To receive and hold all school moneys as a special deposit, and to keep a separate account of their disbursement to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent of common schools.

Second. To notify the county superintendent of common schools of the amount of county school fund in the county treasury, subject to apportionment, whenever required; and to inform said superintendent of the amount of school moneys belonging to any other fund subject to apportionment.

Third. To pay all warrants drawn on county or district school moneys, in accordance with the provisions of this article, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders.

Fourth. To make, annually, during the month of September of each year, a financial report, for the last preceding school and fiscal year ending with August 31st, to the county superintendent of common schools, in such form as may be required by him.

Sec. 1095. A county superintendent of common schools shall be elected in each organized county in this Territory at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter, who shall take office on the first Monday in December next succeeding his election, and hold for two years, or until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond to the county, in a sum to be fixed by the board of county commissioners of said county. The county commissioners of any county shall, by appointment, fill any vacancy that may occur in the office of county superintendent until the next general election.

Sec. 1096. The county superintendent shall apportion all school moneys to the school districts, in accordance with the provisions of this article, quarterly, and he may make apportionments at such other times as may be required or deemed necessary for the convenience of school officers. He shall certify to the several district clerks and county treasurers the amount so apportioned to the several districts, and the trustees shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrant shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the treasury to the credit of such district.

Sec. 1097. The county superintendent shall have power, and it shall be his duty:

First. To visit each school in his county at least once a year.

Second. To distribute promptly all reports, laws, forms, circulars and instructions which he may receive for the use of school officers and teachers, from the superintendent of public instruction.

Third. To report to the superintendent of public instruction annually during the month of October for the school year ending August 31st, next preceding, such statistics as may be required of him.

Fourth. To examine all persons who wish to become teachers in his county, and if they are competent and are of good moral character, he shall give such persons a certificate, certifying the relative standing in each study required by law to be taught in the public schools, and such other studies as may be authorized by the trustees of the district in which the applicant proposes to teach, and that he or she is qualified to teach in said county. Such certificate shall hold good for the term of two years, but may be revoked sooner by the superintendent for good cause. The superintendent shall receive the sum of two dollars from all teachers examined by him.

Fifth. To enforce the course of study adopted by the Territorial superintendent of public instruction.

Sixth. To enforce the rules and regulations required in the examination of teachers.

Seventh. To keep on file and preserve in his office the biennial report of the superintendent of public instruction.

Eighth. To keep in a good and well bound book, to be furnished by the county commissioners, a record of his official acts.

Ninth. To carefully preserve all reports of school officers and teachers, and, at the close of his term of office, deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county clerk.

Sec. 1098. If the county superintendent fails to make a full and correct report to the superintendent of public instruction, of all statements required to be made by law, he shall forfeit the sum of one hundred dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

Sec. 1099. The county superintendent shall have power to administer oaths and affirmations to school trustees, assessors, collectors, teachers, and other persons, in all official matter connected with or relating to schools, but shall not have power to make or collect any charge or fee for so doing.

Sec. 1100. The county superintendent shall have power, and it shall be his duty, to appoint trustees and district clerk for any district which from any cause fails to elect at the regular time; to appoint trustees and district clerk fo fill vacancies; to appoint trustees and district clerk for any new district: *Provided, however*, that when a new district is organized, such of the trustees and district clerk of the old district as reside within the limits of the new one shall be trustees and district clerk of the new one, and the vacancies in the old district shall be filled by appointment.

Sec. 1101. It shall be the duty of every county superintendent to inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the county board of commissioners, and to keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or incorrectly described, he shall change, harmonize, and describe them, and make a report of such action to the commissioners; and, on being ratified by the commissioners, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of that county. The county superintendent shall furnish the several district clerks with descriptions of the boundaries of their respective districts.

Sec. 1102. Each county superintendent, except when otherwise provided by statute, shall receive such salary and his reasonable traveling expenses, not to exceed ten dollars per district, to be estimated and allowed by the board of county commissioners, which shall be paid quarterly out of the county general fund, in the same manner as other county officers are paid: *Provided*, That such compensation shall not exceed the sum of one dollar for each school census scholar in his county, exclusive of traveling expenses, and that he shall be allowed in addition to his salary a sum for postage and expressage, payable out of the county school fund, equal to one dollar for each school district in his county.

Sec. 1103. For the purpose of organizing a new district or for the subdivision of or change in the boundaries of an old one, except as provided in section 1101, at least five heads of families must present a petition to the county superintendent, setting forth the boundaries of the new district asked for, or the change of the boundaries desired, with the reasons for the same. The county superintendent shall, after giving due notice to all parties interested, transmit the petition to the board of county commissioners, with his approval or disapproval, and such changes in the boundaries as he may deem necessary or advisable. The commissioners shall establish the district as approved by the county superintendent, provided, that by a vote of the board, they may establish the district in accordance with the original prayer of the petition, or with such modification as they may choose to make, or may reject it. In any case of alleged hardship, any head of family, parent or guardian, may make a statement of the facts to the board of commissioners, and if, in the judgment of the board, good cause be shown for such transfer, he may be transferred to another district.

Sec. 1104. No new district formed by the subdivision of an old one shall be entitled to any share of the public moneys belonging to the old district, until a school has been actually commenced in such new district, and unless within eight months from the action of the commissioners a school is opened, then the action making a new district shall be void, and all elections or appointment of trustees made in consequence of such action, and all rights and offices of the parties so elected or appointed shall cease and determine; and all taxes which may have been levied in such old district shall be valid and binding upon the real and personal property of the new district, and shall be collected and paid into the school fund of the district.

Sec. 1105. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district, after the payment of all outstanding debts at the time when a school was actually commenced in such new district; and the county superintendent shall divide and apportion such remaining moneys, and such as may afterwards be apportioned to the old district, according to the number of census children resident in each district, for which purpose he may order a census to be taken.

Sec. 1106. Whenever a district is formed lying partly in two adjoining counties, the clerk of the district shall report to each county superintendent the number of children in the district residing in his county. In the same manner the trustees and teacher shall make a distinct and separate report of all school statistics; and a teacher's certificate, granted by the county superintendent of one county shall be valid for both counties.

Sec. 1107. The board of trustees of each school district shall have custody of all school property belonging to the district, and shall have power in the name of the district, or in their own names as trustees of the district, to convey by deed all the interest of their district in or to any school house or lot directed to be sold by vote of the district; and all conveyances of real estate made to the district or to the trustees thereof, shall be made to the board of trustees of the district, and to their successors in office. Said board, in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

Sec. 1108. An annual school meeting for the election of school trustees and district clerk shall be held in each district on the last Saturday in August of each year, at the district school house, if there be one, and if there be none, at a place to be designated by the board of trustees. The trustees shall post written or printed notices thereof, specifying the day, time, and place of meeting in at least three public places in the district, one of which shall be the school house, at least six days previous to the time of meeting; but no such meeting shall be illegal for the want of due notice. All elections shall be held by ballot, and the trustees shall have power to determine the hours which the ballot box shall be kept open, having given due notice thereof, in the posted notice of election. Every elector legally qualified to vote at any general election, being a resident of the school district and a taxable inhabitant thereof, shall be entitled to vote. Any person offering to vote may be challenged by any legally qualified elector of the district, and the chairman of the board of trustees shall thereon administer to the person challenged an oath, in substance as follows: "You do swear (or affirm), that you are a citizen of the United States, that you are twenty-one years of age, according to the best of your information and belief; that you have resided in this Territory twenty days next preceding this election, and that you are a taxable resident of this school district, and that you have not before voted this day." If he shall refuse to take the oath, his vote shall be rejected; and any person guilty of illegally voting shall be punished as provided in the general election law of this Territory. The trustees shall be the inspectors and judges of election, and if they are not present at the time for opening the polls, then the electors present may appoint the officers of election. A poll and tally list shall be kept by the clerk of the board of trustees, and, with the exceptions mentioned in this section, the election shall be conducted, as far as practicable, in the form and manner of the general election. Any one of the old trustees shall have power to administer to any trustees-elect the oath of office, and the clerk of election shall issue the certificate of election to any trustees-elect, who shall forward it, with the oath attached or endorsed thereon, to the county superintendent of public schools.

SEC. 1109. In all organized districts in which elections have been previously held, one trustee shall be elected for the term of three years, and if there are vacancies to be filled, a sufficient number to fill them for the unexpired terms; and the ballots shall specify the respective terms for which each trustee is to be elected. In new districts acting under trustees appointed by the county superintendent, three trustees shall be elected for one, two, and three years, respectively. Trustees-elect shall take office immediately after qualifying, and shall hold office until their successors are elected and qualified, or appointed by the county superintendent and qualified. Any trustee-elect who shall fail to qualify within ten days after being elected, shall forfeit all right to the office, and the county superintendent shall appoint to fill the vacancy.

SEC. 1110. Whenever any new district is formed by ordinance of the board of commissioners, within thirty days thereafter a special school meeting may be called by notice of any three legal voters of said district, and such meeting shall be conducted in the manner and form prescribed in this article for the annual school meeting for the election of trustees. Such new district shall be considered organized whenever any two of the trustees elected shall have qualified; and the record of the district clerk shall be *prima facie* evidence of the legal organization of the district, and the district shall be designated by numbers.

SEC. 1111. No district school meeting, annual or special, shall be organized before nine o'clock A. M., or closed before twelve o'clock M., or kept open less than one hour, and in all districts in which the number of youth and children between four and twenty-one years of age equals or exceeds three hundred, the polls shall be kept open from two o'clock P. M. until sunset.

SEC. 1112. It shall be the duty of the district clerk to record all proceedings of the board in a suitable record-book; to record in the same book the proceedings of the annual school meetings, or of special school meetings, and to keep an accurate and detailed account of all receipts and expenditures of school moneys. At each annual school meeting the district clerk shall present his record-book for public inspection; shall make a statement of the financial condition of the district, and of the action of the trustees, provided, that the record shall be open to the inspection of the public.

SEC. 1113. Every board of trustees, unless otherwise especially provided by law, shall have power, and it shall be their duty:

First. To employ, and, for sufficient cause, dismiss teachers, mechanics, and laborers, and to fix, alter, allow, and order paid their salaries and compensation.

Second. To enforce the rules and general regulations of the Territorial superintendent of public instruction for the government of schools, pupils, and teachers, and to enforce the course of study adopted in pursuance of Territorial law.

Third. To provide and pay for school furniture and apparatus and such other articles, materials and supplies as may be necessary for school use or for the use of the school board.

Fourth. To suspend or expel pupils from school, and in cities or large towns to exclude from school children under six years of age, where the interests of the school require such exclusion.

Fifth. To rent, furnish, repair and insure school houses.

Sixth. To build or remove school houses, and purchase or sell school lots, when the trustees may be directed by a vote of the district so to do.

Seventh. To purchase personal property, and to receive, lease, and hold in fee, in trust for their district, town, or city, any and all real or personal property for the benefit of the schools thereof.

Eighth. To provide books for indigent children on the written statement of the teacher that the parents of such children are not able to purchase them.

Ninth. To require all pupils to be furnished with suitable books, as a condition of membership in the school.

Tenth. To exclude from school and school libraries, all books, tracts, papers, or catechisms of a sectarian or political character.

Eleventh. To require every teacher to keep a school register.

Twelfth. To require teachers to make such annual report as may be required by the superintendent of public instruction.

Thirteenth. To make an annual report during the month of September of each year for the school year next preceding, to the county superintendent, in the manner and form and on the blanks prescribed by the superintendent of public iustruction.

Fourteenth. To make a report, whenever required, directly to the Territorial superintendent of public instruction, of the text books used in their schools.

SEC. 1114. It shall be the duty of the district clerk to take annually, between the twentieth and thirtieth days of November of each year, an exact census of all children and youth over four and under twenty-one years, residing in the district, and shall specify the number and sex of such children, and the names of their parents or guardians. He shall take, specifically and separately, a census of all children under four years of age, and shall specify the number and sex of such children. All children who may be absent from home attending boarding schools and private seminaries of learning shall be included by the district clerk in the census list of the city, town, or district in which their parents reside, and shall not be taken by the district clerk of the city, town, or district where they may be attending such private institution of learning. He shall make a full report thereof on the blanks furnished for that purpose, under oath, to the county superintendent, on or before the first day of December thereafter, and deliver a copy to the school trustees. The district clerk shall be paid by the board of trustees from the county school money, to the credit of the district, in the same manner as other contingent expenses are paid, at a rate not exceeding ten cents for each name returned by him.

SEC. 1115. The district clerk of each district shall provide all school supplies authorized by this article, and shall keep the school house in repair during the time school is taught therein, and shall keep an accurate record of all expenses incurred by him on account of the school, which account shall be audited by a majority of the board of trustees, and paid out of the county school moneys of that district.

SEC. 1116. Any board of trustees shall be liable, as trustees, in the name of the district, for any judgment against the district, for any salary due any teacher on contract, and for all debts legally contracted under the provisions of this article, and they shall pay such judgment or liabilities out of the school money to the credit of such district.

SEC. 1117. Any board of trustees shall have power to make arrangements with the trustees of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school moneys due by apportionment to such children to the district in which they may attend school.

SEC. 1118. Every school, unless otherwise provided by special law, shall be open for the admission of all children between five and twenty-one years of age, residing in that school district, and the board of trustees shall have power to admit adults and children not residing in the district, whenever good reasons exist for such exceptions.

SEC. 1119. All schools shall be taught in the English language, and instructions shall be given in the following branches, viz.: Reading, writing, orthography, arithmetic, geography, English grammar and history of the United States, and such other studies as may be deemed necessary may be authorized by the trustees of the district. Instructions shall be given during the entire school course in manners and morals and the laws of health, and due attention shall be given to such physical exercises for the pupils, as may be conducive to health and vigor of body, as well as mind, and to the ventilation and temperature of school rooms.

SEC. 1120. The education of children of African descent shall be provided for in separate schools. Upon the written application of the parents or guardians of at least ten such children to any board of trustees, a separate school shall be established for the education of such children, and the education of a less number may be provided for by the trustees, in separate schools, in any other manner, and the same laws, rules and regulations which apply to schools for white children shall apply to schools for colored children.

SEC. 1121. No books, tracts, papers, catechisms, or other publications of a partisan, sectarian, or denominational character, shall be used or distributed in any schools, neither shall any political, sectarian, or denominational doctrine be taught therein; and any school district, the officers of which shall knowingly allow any school to be taught in violation of these provisions, shall forfeit all right to any county apportionment of school moneys, and upon satisfactory evidence of such violation, the county superintendent shall withhold its county apportionment.

SEC. 1122. The school day shall be six hours in length, exclusive of an intermission at noon; but any board of trustees may fix, as the school day, a less number of hours than six: *Provided,* It be not less than four, for any primary school under their charge, and any teacher may dismiss any and all scholars under eight years of age, in any incorporated village, town, or city, after an attendance of four hours a day, exclusive of an intermission at noon.

SEC. 1123. All pupils who may be attending public schools shall comply with regulations established in pursuance of law for the government of such schools; shall pursue the required course of study, and shall submit to the authority of the teachers of such schools. Continued and willful disobedience, and open defiance of the authority of the teacher, shall constitute good cause for expulsion from school; and habitual profanity and vulgarity, good cause for suspension from school. Any pupil who shall in any way cut, deface, or otherwise injure any school house, fences, or out buildings thereof, shall be liable to suspension and punishment, and the parents or guardians of such pupil shall be liable for damages, on complaint of the teacher or trustees.

SEC. 1124. Every teacher employed in any public school shall make an annual report to the county superintendent on or before September first next after the close of each school year, in the form and manner and on blanks prescribed by the superintendent of public instruction. A duplicate of such report shall be furnished to the district clerk. Any teacher who shall end any school term before the close of the school year shall make a report to the county superintendent immediately after the close of such term, and any teacher who may be teaching any school at the close of the school year shall, in his or her annual report, include all statistics from the school register for the entire school year, notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as may be required, in pursuance of law, by the Territorial superintendent of public instruction. No board of trustees shall draw any order or warrant for the salary of any teacher for the last month of his or her services, until the reports herein required shall have been made and received.

SEC. 1125. Every teacher shall keep a school register in the manner provided therefor, and no board of trustees shall draw any warrant for the salary of any teacher for the last month of his or her services in school at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce, in school, the course of study, and the regulations prescribed in pursuance of law; and if any teacher shall willfully refuse or neglect to comply with such requisition, then the board of trustees shall be authorized to withhold any warrant for salary due until such teacher shall comply therewith. No teacher shall be entitled to draw for salary and school moneys, unless such teacher shall be employed by a majority of the trustees, nor unless the holder of a legal county teacher's certificate, in full force and effect.

SEC. 1126. In every contract, whether written or verbal, between any teacher and any board of trustees, a school month shall be construed and taken to be twenty school days, or four weeks of five school days each, and no teacher shall be required to teach on Saturdays, the fourth day of July, the first day of January, Christmas day, and no deduction from the teacher's time or wages shall be made by reason of the fact that a school day happens to be one of the days referred to in this section, as a day on which school shall not be taught. Any contract made in violation of the provisions of this section shall have no force or effect as against the teacher.

SEC. 1127. Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to or from school, or on the play grounds of the school, or during intermission or recess; to suspend from school any pupil for good cause: *Provided*, That such suspension shall be reported by the teacher to the trustees, as soon as practicable, and their decision shall be final.

SEC. 1128. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice, and patriotism; to teach them to avoid idleness, profanity, and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties, and dignity of American citizenship.

SEC. 1129. The principal of all moneys accruing to this Territory, from the sale of any land which may hereafter be given by the congress of the United States, for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the Territory, proportionally to the number of youth or children in each, between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

SEC. 1130. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to lay an annual tax of not less than three, nor more than five mills, on the dollar, on all taxable property within their respective counties, as shown by the assessment rolls made by the county assessor for the same year; and to include the same in their warrant to the collector; and the said collector shall proceed to collect the said tax, in the same manner as the other county tax is collected; and the said money so collected shall be paid over to the county treasurer, to be drawn in the manner prescribed in this article; neither shall it be lawful for any county treasurer to receive county orders in payment of county school tax, nor to pay out any school money on county orders. For the further support of common schools there shall be set apart by the county treasurer all moneys paid into the county treasury, arising from all fines for a breach of any law regulating license for the sale of intoxicating liquors, or for the keeping of bowling alleys, or billiard saloons, or of any penal laws of this Territory. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by tax in each county and divided in the same manner.

SEC. 1131. That it shall be the duty of the county clerks of the several counties of the Territory, to make a report to the county superintendent of common schools within their counties during the month of September of each year, of the school tax levied and the assessed valuation of the proper counties for that year, and that it be the duty of the clerk of the district court, at the close of every term thereof, to report to the county superintendent of the county in which said term shall have been holden, whether or not any fines, and if any, what ones, were imposed by the said court during the said term, and that it be the duty of the probate judge and of all justices of the peace, to report to the county superintendent of their respective counties, during the month of September, of each year, whether or not they have imposed and collected any fines during the preceding year; and if any, what ones, with the date at which the same were paid to the county treasurer; and all officers mentioned in this article who shall fail or neglect to perform any of the duties required by this article shall be deemed guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction thereof, shall be fined in any sum not less than twenty dollars, and not more than one hundred dollars for each neglect, and such fine shall be paid into the county treasury for the benefit of common schools in said county.

SEC 1132. Whenever the interests of the districts require it, the board of trustees may establish a high school, employ a principal teacher and subordinate teachers, and grade the school into departments and classes.

SEC. 1133. The board of trustees of any district may, when in their judgment it is advisable, submit to the qualified electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to maintain any school or schools in such district, or for building one or more school houses, or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference, and other appliances and apparatus for teaching, or for any or all of these purposes. Such election shall be called by posting notices in three of the most public places in the district for at least twenty days. Said notices shall contain the time and place of holding the election, the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used. The trustees shall act as judges to conduct the election, and it shall be held in all other respects, as nearly as practicable, in conformity with the general election law. At such elections, the ballots shall contain the words: "Tax, Yes," or "Tax, No." If a majority of the votes cast are "Tax, Yes," the officers of the election shall certify the fact to the district clerk, who shall at once proceed to copy from the last assessment roll of the county assessor the list of property liable to taxation, situated in or owned by residents of his district, and shall deliver the same to the board of trustees, who may allow him a reasonable compensation therefor, out of the proceeds of said tax; said compensation not to exceed six dollars per day. The trustees shall, upon receiving the roll, deduct ten per cent. therefrom for anticipated delinquencies, and then by dividing the sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent. required, and the rate so ascertained [using the full cent on each one hundred dollars in place of any fraction] shall be, and is hereby, levied and assessed to, on, or against the persons or property named or described in said roll; and it shall be a lien on all such property until the tax is paid, and said tax, if not paid within the time limited within the next section for its payment, shall be recovered by suit in the same manner and with the same costs as delinquent Territorial and county taxes. The trustees, upon receiving any assessment roll from the district clerk, shall give five days' notice thereof by posting a notice in three public places in the district, and shall sit for at least one day as a board of equalization, at such time and place as shall have been named in said posted notices; and they shall have the same power as county boards of equalization to make any change in said assessment roll.

SEC. 1134. As soon as the rate of taxation has been determined, as provided in the last preceding section, the trustees shall certify the same to the county clerk, who shall extend the same upon the general assessment roll of the county, and certify the same to the county treasurer, who shall proceed to collect the tax, in the same manner and at the same time and with the same power and authority to enforce payment of the same, as in the case of county and Territorial taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs, and shall receive as compensation for collecting the same such sum, not more than five per cent. of the tax collected, as may be allowed by the county commissioners; said compensation to be paid from the amount of said district tax so collected.

SEC. 1135. All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school census children between four and twenty-one years of age, as shown by the returns of the district clerk for the next preceding school census: *Provided*, That Indian children, who are not living under the guardianship of white persons, shall not be included in the apportionment list.

NOTE.—Act February 21st, 1879.

SEC. 1136. County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this article, and for no other purpose.

SEC. 1137. No school district shall be entitled to receive any apportionment of county school moneys, unless the teacher employed in the schools of such districts shall hold legal certificates of fitness for the occupation of teaching, in full force and effect.

SEC. 1138. No school district shall be entitled to receive any apportionment of county school moneys which shall not have maintained a free public school for at least three months during the next preceding school year: *Provided,* That any new district, formed by the division of an old one, shall be entitled to its apportionment, where the time that school was maintained in the old district, before division, and in the new one after division, shall be equal to at least three months.

SEC. 1139. When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor in office all books, papers and moneys pertaining to his office; and every such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or shall misapply any moneys intrusted to him by virtue of his office, shall be guilty of a misdemeanor, and shall be punished by a fine, in the discretion of the court, not exceeding one hundred dollars.

SEC. 1140. Every person elected or appointed to any office mentioned in this article shall, before entering upon the discharge of the duties thereof, take an oath to support the Constitution of the United States, the organic act of this Territory, and to promote the interests of education, and faithfully discharge the duties of his office, according to the best of his abilities. In case such officer has a written appointment or commission, his oath shall be endorsed thereon, otherwise it may be taken orally. In either case it may be sworn to before any officer authorized to administer oaths; and school officers are hereby authorized to administer all oaths relative to school business, appertaining to their respective offices, without charge or fee.

SEC. 1141. No school trustee or other school officer shall be, directly or indirectly, interested in any contract made by the board of which he is a member; and any contract made in violation of this provision shall be null and void.

SEC. 1142. All fines and penalties, not otherwise provided for in this article, shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

SEC. 1143. Any parent, guardian, or other person, who shall upbraid, insult or abuse any teacher, in the presence of the school, shall be deemed guilty of a misdemeanor, and liable to a fine of not less than ten dollars nor more than one hundred dollars.

SEC. 1144. Any person who shall willfully disturb any public school or any public school meeting, shall be guilty of a misdemeanor and liable to a fine of not less than ten nor more than one hundred dollars.

SEC. 1145. In case any district clerk shall fail to take the census provided in this article, at the proper time, and if, through such neglect, the district shall fail to receive its apportionment of school moneys, said district clerk shall be individually liable to the district for the full amount so lost, and it may be recovered on a suit brought by any citizen of such district, in the name of and for the benefit of the district.

SEC. 1146. All cases of dispute in relation to school matters, not properly belonging to courts of justice, may be referred, first, to the county superintendent, and appealed to the Territorial superintendent, whose decision shall be final.

SEC. 1147. The school year shall begin on the first day of September, and end on the last day of August.

SEC. 1148. All printing or binding required under this article shall be executed in the form and manner and at the prices of other Territorial printing, and shall be paid in like manner, out of the general fund of the Territory.

SEC. 1149. This article shall be known and referred to as the Montana School Law, and no other title or reference shall be necessary.

NOTE.—Act February 13th, 1874, except where otherwise noted.

ARTICLE II.

TRANSFER OF CERTAIN ROAD MONEYS TO SCHOOL FUND.

Sec. 1150. *County treasurer to transfer road moneys to school district fund.*
Sec. 1151. *Authority for transfer.*
Sec. 1152. *Application of moneys transferred.*

SEC. 1150. That from and after the passage of this article it shall be lawful, and it is hereby made the duty of the county treasurers of the several counties of Montana, to transfer any and all sums of money raised by county road tax and apportioned to certain road districts, and that shall have remained one year to the credit of any road district unused or unappropriated, to the credit of the particular school district or districts whose boundaries are coterminous or nearly so with those of the road district to whose credit said moneys were originally apportioned.

SEC. 1151. A certificate of the road supervisor that such moneys are not needed for immediate use in building or repairing roads of his district, accompanied by the petition of ten residents of such district that such transfer be made, shall be made sufficient warrant for the county treasurer to make such transfer, and the official maps of the several road and school districts of the county shall determine the districts to which the transfers are to be made.

SEC. 1152. Moneys so received to the credit of any particular school district, may be applied by the trustees thereof to the payment of any outstanding district indebtedness, or like other funds, to the ordinary expenses of the district.

NOTE.—Act of February 9th, 1879.

ARTICLE III.

OF SCHOOL OR COLLEGE SITES AND OF ISSUING BONDS OR NOTES FOR SCHOOL PURPOSES.

Sec. 1153. *Disposition of college sites for school purposes.*
Sec. 1154. *Authority of trustees to issue bonds and notes for school purposes.*

SEC. 1153. Whenever under the provisions of the laws of this Territory the probate judge of any county, or the mayor of any incorporated town or city, shall have set apart as and for a site for a college or university, any lands or lots in any town site, the school trustees of any school district in which such site is situate, if they shall so elect, may take possession thereof and occupy the same or any part thereof for school purposes, until the same shall be needed for the uses for which it was originally set apart; and, if in the judgment of the superintendent of public instruction of the Territory and the county superintendent of common schools and the trustees of the school district in which such site is situate, such site is more appropriate and will be more useful as school grounds for the common schools than as a site for a college or university, they shall so declare in writing, which declaration shall be recorded with the probate judge, and thereafter the said college or university ground shall belong to said school district. And if heretofore any grounds so set apart for a college or university shall have been conveyed to the superintendent of common schools of the county in which such lands are situate for the time being, such conveyance is hereby confirmed and declared valid as a trust to all intents and purposes whatsoever, and such superintendent and his successors in office are hereby declared trustees for the purpose of holding such title, and the said conveyance shall enure to him and his successors in such office, in trust for the uses for which the grounds were originally set apart, but subject to the provisions of this section with reference to the district schools.

Sec. 1154. *And be it further enacted,* That whenever heretofore in the construction of any school house the expense of such construction and the grading and fencing the ground, and constructing out houses and furnishing the same, shall have exceeded the estimate therefor and the amount of moneys belonging to such district applicable thereto, and the said district is in debt therefor, such district, by its trustees, may give its note or notes for the deficiency so remaining unpaid, for a period not exceeding three years, which may draw interest at a rate not exceeding eighteen per cent. per annum; or if they so elect, they may issue the bonds of such district due at a time not exceeding six years from their issuance, which shall bear interest, payable semi-annually, at a rate not exceeding ten per cent. per annum, and they shall ascertain the tax requisite to pay the installments of interest as they become due, and a sinking fund to meet the bonds at their maturity in the manner now required under existing laws as to special tax levies of a school district, and thenceforward all laws providing for the collection of such taxes shall apply with reference thereto, but the said moneys so raised shall be under the control of the board of trustees.

NOTE.—Act of February 11th, 1876.

ARTICLE IV.

SCHOOL FUND FROM PROCEEDS OF TOWN LOTS.

Sec. 1155. *Proceeds of the sale of town lots to be a special school fund.*
Sec. 1156. *To be paid into school district fund and used for building and furnishing purposes.*
Sec. 1157. *Authority to draw warrants on such fund.*
Sec. 1158. *Election to authorize its use for other purposes.*

SEC. 1155. That all moneys arising from the sale of town lots under and by virtue of the several acts of the legislative assembly of the Territory of Montana relating to town sites, that now is or that may hereafter come into the hands of any probate judge, or the corporate authorities of any city or town of this Territory, shall be paid into the county treasury of the county for the use and benefit of the common schools of the school district in which such city or town is situated, to be used as provided for in this article.

SEC. 1156. The county treasurers of the several counties of this Territory shall transfer all moneys so paid into said treasury, as provided for in section 1155 of this article, or that may now be in such treasury, derived from said source, to the school fund of the school district in which such town is situated, which shall be paid out on the order of the school trustees of such district, as provided for in section 1157 of this article; and which said moneys shall be by said treasurer set apart as a special fund for the purpose of building and furnishing school houses, and shall be used for such purpose alone, unless otherwise ordered, as provided for in this article.

SEC. 1157. The school trustees of any school district are hereby authorized to draw warrants on said fund named in sections 1155 and 1156 of this article, for the purpose of building and furnishing a school house in such place, in the town or city from the sale of lots out of which such fund arose, as they may designate, which said warrants or orders shall specify the fund on which the same are drawn, and for what purpose drawn.

SEC. 1158. That said fund may be used for general school purposes, if a majority of the qualified voters of such district shall so elect, and upon the written request of any fifty of the qualified voters of such district, presented to the trustees for such purpose, said trustees shall order an election for such purpose, at which election said trustees shall prepare the form of the ballot used at such election, and which election shall be given notice of and conducted as other elections provided for the several school districts under the general school laws of this Territory, and that when any warrant is so drawn on said fund for other purposes than the building and furnishing a school house, said warrant shall so specify that it was pursuant to an election held for such purpose.

NOTE.—Act February 15th. 1877.

ARTICLE V.

TEACHERS' INSTITUTES.

Sec. 1159. *When county superintendent may hold a teachers' institute.*
Sec. 1160. *Duty of teachers to attend.*
Sec. 1161. *Pay allowed during attendance.*
Sec. 1161. *Expenses of such institute, and how paid.*

SEC. 1159. That the county superintendent of common schools in any county in this Territory, containing ten or more than ten organized school districts, may, when he believes that the educational interests of his county would be promoted thereby, hold annually a teachers' institute at such time as may be agreed upon between him and the Territorial superintendent, and such institute shall continue in session not less than two days nor more than five days. He shall give at least ten days notice of the time and place of holding such institute by publication in some newspaper published in the county, if there be one, if not, by one written notice to each qualified teacher in the county.

SEC. 1160. It shall be the duty of all teachers engaged in the county, and of all persons holding certificates, to attend such institute and participate in the exercises thereof, and all teachers who may have charge of schools at the time of holding the annual institute shall adjourn their schools for the time during which the institute shall be held.

SEC. 1161. All teachers who may adjourn school for the purpose of attending any annual institute shall be allowed the same pay while in actual attendance as when teaching, and the county superintendent shall certify to the number of days' attendance of each teacher, and the trustees of the several districts shall count them as so many days lawfully employed.

SEC. 1162. The county superintendent of common schools shall provide a building, fuel, lights, stationery, janitor's services, and all things necessary for holding the institute, and shall present an itemized account of such expenses, not to exceed twenty-five dollars, to the board of county commissioners, and it shall be paid from the school fund of the county.

NOTE.—Act February 16th, 1877.

CHAPTER LVI.

SEALS.

Sec. 1163. *Conveyances and instruments as effectual without as with seal.*

SEC. 1163. All conveyances and instruments hereafter executed, which by the common law or the statutes of this Territory are required to be executed under seal, shall be as effectual without such seal to all intents and purposes whatsoever, as if the same had a seal attached thereto, and the same shall be interpreted as if the same were sealed; but this chapter shall not apply to municipal or other corporations which by law are required to attest their action under seal.

NOTE.—Act of February 3d, 1876.

CHAPTER LVII.

SECRETARY OF THE TERRITORY.

Sec. 1164. *Authority and powers of the secretary.*
Sec. 1165. *Required to make copies of laws, etc.*
Sec. 1166. *To countersign and affix seal to commissions.*
Sec. 1167. *Certified copies of documents received in evidence.*
Sec. 1168. *Fees of secretary.*

SEC. 1164. That the secretary of the Territory of Montana be, and is hereby, authorized and empowered to take the acknowledgment of deeds and other instruments of writing, and to administer all oaths of office and other oaths, required to be taken by any person before entering upon the discharge of the duties of any office, appointment, place, or business, or any other lawful occasion, and to take affidavits and depositions concerning any matter or thing, process or proceeding, depending or to be commenced, in any court, or before any justice of the peace, or on any occasion wherein such affidavits or depositions are authorized or required by law to be taken; and for the rendition of any service by virtue of the authority and power above given, the said secretary shall be entitled to the same fees that are, or, by law, may be, allowed to the clerk of the supreme court of the Territory for similar services.

SEC. 1165. The secretary of the Territory shall, when required by any person or persons so to do, make out copies of all laws, acts, memorials, or resolutions appertaining to his office, or in his custody, and shall attach thereto his certificate, under the seal of the Territory, and for which he shall be entitled to such fees and compensation as are provided in this chapter.

SEC. 1166. All commissions required to be issued by the governor shall be countersigned by the secretary of the Territory, who shall affix the Territorial seal thereto.

SEC. 1167. Copies of all bonds, papers, writings, and documents legally deposited in the office of the governor or in the office of the secretary of the Territory, and authenticated by the seal of his office, shall be received in evidence in the same manner and with like effect as the original.

NOTE.—Act of Janary 12th, 1872.

SEC. 1168. The fees of the secretary of the Territory shall be as follows:

For certificate and seal, one dollar; for official seal and signature, without certificate, fifty cents; for filing and approving bond, one dollar; for each commission issued to any officer, two dollars; for receiving and filing each certificate of incorporation, two dollars; for recording each instrument of writing, per folio, twenty cents; for filing each paper, fifteen cents; for copy of any law, act, or any other writing, per folio, twenty cents.

NOTE.—Act April 30th, 1873.

CHAPTER LVIII.

SIGNATURES AND MARKS.

SEC. 1169. The signature of a party, when required to a written instrument, shall be equally valid if the party cannot write, provided the person make his mark, and the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name upon such instrument as a witness.

NOTE.—Act January 12th, 1872.

CHAPTER LIX.

STATISTICS.

Sec. 1170. *Auditor to prepare table of statistics.*
Sec. 1171. *All officers to answer questions of auditor relating thereto.*
Sec. 1172. *Duty of assessor to collect statistics; enumeration thereof.*
Sec. 1173. *Duties of various officers.*
Sec. 1174. *Fees of various officers.*
Sec. 1175. *Penalties for non-performance of duties.*

SEC. 1170. That it shall be the duty of the Territorial auditor, annually hereafter, to prepare from the official reports, and from whatever other reliable sources to which he may obtain access, as full and intelligible tables of the statistics of Montana as may be in his power, and report the result of his labors to the governor, or the legislative assembly, if in session.

SEC. 1171. That in order to insure more perfect collection of the statistical information contemplated by this chapter, it shall be the duty of any Territorial or county or other officer, to answer fully and promptly such special and general questions as the Territorial auditor may propound in carrying out the intention of this chapter, and no person shall receive any compensation for answering such questions, except as hereinafter provided.

SEC. 1172. That the several county and district assessors and deputy assessors shall annually, at the time of taking the list of personal property for taxation, take from each person, company, or corporation, in his own county or district, a statement of the number of acres he or they may have had the preceding year in wheat, rye, barley, corn, oats, peas, buckwheat, and potatoes, and the number of bushels each produced the preceding year; the number of acres in cabbage, rutabagas, turnips, and onions, and the number of pounds produced the preceding year; the number of acres of meadow in cultivation, and the number of tons of hay; the number of milch cows used in dairy, and the number of pounds of butter and cheese produced; the number of sheep, and the number of pounds of wool shorn; the number of apple or fruit trees, and the number of bushels of each kind of fruit produced; the number of ranches, and wages paid per month; gross receipts from placer mines, and wages paid per day; number of quartz mills, and gross receipts of same, with wages paid per day; number of grist mills, and number of sacks of flour manufactured; number of saw mills, and number of thousand feet of lumber cut; number of tanyards, and number of sides of leather manufactured; number of foundries, and number of tons of castings produced; number of wagons manufactured; number of carriages manufactured; number of carpenter shops, and wages paid per day; number of harness and saddlery shops, and value of manufactures; number of blacksmith shops, and wages paid per month; number of silversmith shops, and wages paid per month; number of coal mines, and number of bushels taken out; number of reduction furnaces, and the number of pounds of bullion produced, and the value thereof; number of butcher shops, and the number of beeves, calves, sheep and hogs slaughtered; number of pounds of bacon cured; number of births and deaths, and the number of deaths resulting from natural causes, and the number from violence the previous year. The assessor is hereby authorized to administer all oaths necessary to carry into effect the provisions of this chapter.

SEC. 1173. The several county or district assessors shall make return of all blanks containing statistical information, together with a full abstract of the same, to the Territorial auditor, on or before November first, annually; and the Territorial auditor is hereby required to cause to be printed all the necessary blanks to enable the assessors to carry into effect the provisions of this chapter, and to furnish the same to the clerks of the several counties, and the clerks of the several counties are hereby required to cause to be distributed to the assessor or assessors of their respective counties the said blanks, and take a receipt for the same.

SEC. 1174. The clerks of the several counties shall be entitled to receive each year two dollars for distributing the blanks, as provided in this chapter, out of the contingent [fund] of their respective counties. Each assessor shall be entitled to receive twenty cents for each blank returned to the Territorial auditor, containing statistical information, out of the Territorial treasury, out of any money not otherwise appropriated, and the blanks so returned shall be the voucher upon which the Territorial auditor shall issue his warrant upon the Territorial treasurer.

SEC. 1175. Any assessor failing to perform his duty, as provided in this chapter, shall be deemed to have forfeited his office, and be liable to a fine of not more than four hundred, nor less than two hundred dollars. Any clerk failing to perform his duty, as provided in this chapter, shall be liable to a fine of not less than ten dollars, nor more than fifty dollars. And the Territorial auditor is hereby authorized to proceed by a suit at law against any assessor or clerk violating the provisions of this chapter.

NOTE.—Act February 12th, 1874.

CHAPTER LX.

STENOGRAPHERS.

Sec. 1176. *Judge of district court may appoint a short-hand reporter.*
Sec. 1177. *Oaths; attendance and removal.*
Sec. 1178. *Compensation and fees.*

SEC. 1176. The judge of the district court may appoint, whenever in his judgment it will expedite the public business, a short-hand reporter, who shall be well skilled in the art, and competent to discharge the duties required, for the purpose of recording the oral testimony of witnesses in criminal cases, and in civil cases where either of the parties require it, and such other matters as the judge may direct.

SEC. 1177. Such reporter shall take an oath faithfully to perform the duties of his office, which shall be filed in the office of the clerk. He shall attend such sessions of the court as the judge may direct, and may be removed by the judge making the appointment, for misconduct, incapacity, or inattention to duty.

SEC. 1178. Such short-hand reporter shall receive compensation as follows: For each day actually employed in court taking testimony such sum as may be fixed by the judge, not exceeding eight dollars per day, and for making transcripts thereof, for each one hundred and fifty words, fifteen cents. In criminal cases such fees shall be audited and paid out of the county treasury upon a certificate from the judge certifying the amount thereof. In civil cases the fees therefor shall be paid by the party requesting the same, and the amount allowed such reporter shall be taxed as part of the costs.

NOTE.—Act 10th session, 1877.

CHAPTER LXI.

STORAGE AND COMMISSION.

Sec. 1179. *Sale of commission goods for charges; when and how made.*
Sec. 1180. *Sale to vest title in purchaser.*
Sec. 1181. *Balance of purchase money paid to owner.*

SEC. 1179. That any storage or commission merchant receiving goods, wares, merchandise, or machinery from any party for storage, after keeping the same in store for the term of ninety days, may, in default of the payment of the storage or freight money on such goods, wares, merchandise, or machinery, advertise and sell the same at public auction, to the highest bidder, for cash in hand, first giving notice of the time, the terms, and place of sale, and a description of the property to be sold, by publication in some newspaper published in the county where the property may be stored; said notice shall be published at least thirty days previous to the day of sale, and shall specify the amount due on the property to be sold: *Provided,* That when a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon. Should there be no newspaper published in the county where such goods, wares, merchandise, or machinery are stored, then notice may be given in the nearest newspaper published thereto in some other county in Montana: *Provided,* That no more of such goods, wares, merchandise, or machinery shall be sold than is necessary to pay the charges due, together with the costs, and as shall accrue every six months thereafter.

SEC. 1180. That all sales under this chapter shall vest the title to all goods, wares, merchandise, or machinery disposed of under the provisions of this chapter in the purchaser thereof.

SEC. 1181. That after the expense of sale and publication of notice of sale, the storage or commission merchant shall be authorized, out of the proceeds arising from the sale of any goods, wares, merchandise, or machinery disposed of under the provisions of this chapter, to retain the amount due him for storage or freight money advanced on any such goods, wares, merchandise, or machinery, and the excess, if any, to be paid over to the party owning the goods and entitled to the proceeds thereof.

NOTE.—Act January 12th, 1872.

CHAPTER LXII.

SUGAR FACTORY.

Sec. 1182. *First sugar factory exempt from taxation.*
Sec. 1183. *Term "factory or refinery" defined.*
Sec. 1184. *Notice of intention to erect; six months in which to commence work.*
Sec. 1185. *Preference given to party first filing notice.*

Sec. 1182. The first factory or refinery for the manufacture or refining of sugar, from beet roots, or other products of the soil of Montana Territory, erected and operated in the Territory of Montana, of proper construction and sufficient capacity for the production of sugar, shall be exempt from all taxation for the term of six years from the completion of such factory or refinery. The said factory or refinery shall be deemed completed at the time of manufacturing the first refined sugar.

Sec. 1183. The term factory or refinery used in this chapter is hereby defined to include and embrace the building or buildings, land or lands, connected therewith, not exceeding an erea of 160 acres, together with all the presses, washing and grinding mills, boilers, evaporating pans, machinery, utensils, materials, and appurtenances used in or about the same, or in anywise necessarily connected therewith, and all water rights, ditches, flumes, water-wheels, engines, and reservoirs, and all stock, materials, and products on hand unsold, whether the same be raw, manufactured, or refined.

Sec. 1184. That any person, association of persons, or corporation, filing with the auditor of the Territory the first notice of his, their, or its intention to erect and operate a sugar factory or refinery within two years from the filing of said notice, shall have the term of six months from the time of filing the notice aforesaid, to complete the arrangements and obtain the necessary machinery and apparatus for the erection of said factory or refinery; and at, or before, the expiration of the said six months, said person, association, or corporation, shall commence the erection of said factory or refinery, and shall prosecute the work thereupon with due diligence until the same shall be completed.

Sec. 1185. Any person, association, or corporation, that shall first file the notice provided for in section 1184 of this chapter, and shall proceed to erect and complete said factory, or refinery, in manner provided therein, this chapter shall have the effect to give preference to such person, association, or corporation, under this chapter, for the term of six months after the filing of the aforesaid notice.

Note.—Act February 21st, 1879.

CHAPTER LXIII.

SUPREME COURT.

Sec. 1186. *Time of holding terms of.*
Sec. 1187. *Supreme court reporter to be appointed.*
Sec. 1188. *Duties to report decisions and publish them.*
Sec. 1189. *Printing and binding.*
Sec. 1190. *Reporter shall have copyright.*
Sec. 1191. *Disposition of the copies furnished the Territory.*

SEC. 1186. That the terms of the supreme court of the Territory of Montana shall be held at the seat of government of the Territory, on the first Monday in January and the second Monday in August of each year.

NOTE.—Act December 30th, 1871.

SEC. 1187. The opinion and decisions of the supreme court of this Territory shall be reported by an attorney and counsellor at law, appointed by the judges of the supreme court, who shall be an officer of such court during his continuance in office.

SEC. 1188. The reporter shall make careful and accurate reports of all cases argued and decided by the supreme court. He shall be entitled to the possession of the original files in all cases, for a reasonable time, to prepare copies for publication. The report of such cases shall contain concise notes of the points decided, a statement of the facts taken from the record, when the same are not fully given in the opinion of the court, the names of the counsel, and the opinion of the court. He shall publish a volume of such reports as often as there is sufficient matter to form a volume of not less than six hundred pages.

SEC. 1189. The reporter of such volume shall print and bind two hundred copies of such edition, at the expense of the Territory: *Provided*, That the same shall be paid for at the rate of six dollars for each volume of six hundred pages, and that each volume of more than six hundred pages shall be paid for at the same rate, and for the number of pages exceeding six hundred, and upon the said reporter leaving at some place in New York a sufficient number of copies to enable said auditor of the Territory to send one copy to each State and Territory, which place and number shall be designated by said auditor, and depositing a sufficient number of additional copies to make, with the number left, to send to the libraries of the different States and Territories, two hundred copies, the said auditor shall issue to the said reporter a warrant for the amount to be found due, as is in this section provided: *Provided*, That the whole expense of publication of a full volume of such reports shall not exceed the sum of fifteen hundred dollars to the Territory.

NOTE.—Act February 16th, 1877.

SEC. 1190. The reporter shall have the exclusive copyright of each volume as his own property.

SEC. 1191. Of the two hundred copies deposited with the Territorial auditor as above provided, the following officers shall be entitled to one copy of such volume, to-wit: The governor, secretary, Territorial auditor, Territorial treasurer, Territorial superintendent of public instruction, the several judges of the supreme court, the several district attorneys, and the judges of probate of the several counties. A sufficient number shall be sent as exchanges to the several States and Territories of the Union by the Territorial auditor; and the remainder shall be deposited with the Territorial librarian.

NOTE.—Act January 4th, 1872, except where otherwise noted.

CHAPTER LXIV.

SWINE.

Sec. 1192. *Swine not to run at large part of the year.*
Sec. 1193. *Not to run at large at any season in towns and villages.*
Sec. 1194. *Fines and penalties; Missoula excepted.*
Sec. 1195. *Fines go to the school fund.*

SEC. 1192. That hereafter it shall be unlawful for any owner or owners of swine to permit the same to run at large, from the first day of March until the first day of November.

SEC. 1193. That the owner or owners of swine are hereby prohibited from letting the same run at large, at any season of the year, in any town or village, in this Territory, with a population of over ten (10) inhabitants; and any swine so found running at large, in any such town or village, shall upon complaint being made by any citizen, be seized by the sheriff, or any constable of the county, and sold in the same manner as now provided by law for the sale of personal property on execution, and the proceeds thereof shall be paid into the common school fund of the county.

SEC. 1194. Any person or persons violating the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of ten (10) dollars for the first offence, and in an additional sum of twenty (20) dollars for each subsequent offence, and shall be liable in damage to any party injured thereby, to be recovered in any court having competent jurisdiction: *Provided,* That nothing in this chapter shall be so construed as to apply to any portion of the county of Missoula, except the towns and villages therein.

SEC. 1195. That all fines collected under the provisions of this chapter, shall be paid into the county treausury for the use and benefit of the common schools of said county.

NOTE.—Act of February 13th, 1879.

CHAPTER LXV.

TERRITORIAL AND COUNTY OFFICERS' REPORTS.

Sec. 1196. *Auditor to publish annually the auditor and treasurer's reports.*
Sec. 1197. *Report of county superintendent.*
Sec. 1198. *Report of Territorial superintendent.*
Sec. 1199. *Publication of report of Territorial superintendent.*
Sec. 1200. *Provision to pay for printing.*
Sec. 1201. *Penalty for not reporting.*

SEC. 1196. That on the first day of January of each year hereafter, it shall be the duty of the Territorial auditor to cause to be published not less than six hundred, nor more than one thousand, copies of the auditor's and treasurer's reports to the governor, for the preceding year, in pamphlet form.

SEC. 1197. Each county superintendent of common schools shall, on or before the fifteenth day of December of each year, report to the Territorial superintendent of public instruction the number of school census scholars between the ages of four and twenty-one years, and the number of children under the age of four years, for the current year, and the amount of school moneys collected from all sources for the fiscal year ending on the first day of December, instant.

SEC. 1198. The Territorial superintendent of public instruction shall report annually—biennially to the legislative assembly, and on the first day of January, 1880, and on each alternate year thereafter to the governor—and such report shall contain an abstract of the supplemental reports of county superintendents required to be made by this chapter.

SEC. 1199. The Territorial superintendent of public instruction shall cause to be published not less than five hundred copies of said report, nor more than seven hundred copies, in pamphlet form.

SEC. 1200. The Territorial auditor shall draw his warrant on the Territorial treasurer in payment for the printing done under the provisions of this chapter, in accordance with the provisions of the printing law.

SEC. 1201. Any officer, required to report under the provisions of this chapter, who shall fail to report as the law directs, shall be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars, and not more than one hundred dollars, before any court having competent jurisdiction; the proceeds of said fines to be paid into the school fund of the county where such conviction shall be had.

NOTE.—Act February 21st, 1879.

CHAPTER LXVI.

TOLL FOR GRINDING GRAIN.

Sec. 1202. *Rate of toll established.*
Sec. 1203. *Accountability of mill owner for grain and sacks.*
Sec. 1204. *Penalty for taking greater rate of toll.*

SEC. 1202. That the owner, or occupier, of any grist mill within this Territory shall be entitled to the one-sixth part of all the wheat, rye, or other grain ground and bolted, and to the one-eighth part of all rye, malt, buckwheat, corn, barley or peas ground or chopped, only.

SEC. 1203. That the owner, or occupier, of every mill aforesaid shall be accountable for the safe keeping of all grain received in said mill for the purpose of being ground therein, and shall deliver the same when ground, or ground and bolted, as the case may be, with the bag or bags, sack or sacks, which were delivered in said mill with the grain, to the owner when called for: *Provided,* That the bag or bags, sack or sacks, left as aforesaid, be distinctly marked with the initials and surname of the owner or owners thereof: *Provided, also,* That nothing herein contained shall be so construed as to charge, or make accountable, any owner, or occupier, of any mill for the loss of any grain, bag or bags, sack or sacks, which shall happen by robbery, fire, or other accident without the fault or neglect of such owner or occupier, or that of any miller employed by such owner or occupier.

SEC. 1204. That if the owner or occupier of any mill, their representative, agent or miller, shall take a greater proportionate quantity of toll than is hereinbefore authorized, and be duly convicted thereof, before any court having jurisdiction of the same, he, or they, shall be fined for every such offence in any sum not exceeding one hundred dollars, at the discretion of the court.

NOTE.—Act February 21st, 1879.

CHAPTER LXVII.

TOWN SITES.

Sec. 1205. *Who shall enter town site under United States law.*
Sec. 1206. *Powers of officers entering town site.*
Sec. 1207. *When survey and plat to be made.*
Sec. 1208. *Size of lots; survey to be filed; where.*
Sec. 1209. *Claimants of lots to file statements; when.*
Sec. 1210. *Requisites of statement.*
Sec. 1211. *Claimants to make proof and pay fees; when.*
Sec. 1212. *What claimant entitled to.*
Sec. 1213. *Authorities to make deed; when.*
Sec. 1214. *Fees in non-contested cases.*
Sec. 1215. *Proceedings in contested cases.*
Sec. 1216. *Claimants may appeal; where.*
Sec. 1217. *When appeal decided authorities to make deed.*
Sec. 1218. *Claimants to make deposit upon filing.*
Sec. 1219. *Authorities may borrow money to defray expenses, etc.*
Sec. 1220. *Lots not claimed open to settlement and entry.*
Sec. 1221. *Disposition of books and papers relating to town site entry.*
Sec. 1222. *Site for school or college set apart; when and how.*
Sec. 1223. *Rights of actual occupant of ground prior to passage of this act.*
Sec. 1224. *Construction of Sec. 1210.*

SEC. 1205. Whenever the citizens of any town located, or that may hereafter be located, upon the public lands of the United States, shall desire to obtain title to the town site thus occupied by them, it shall be lawful for the corporate authorities of such town, or if the same be unincorporated, then for the judge of the probate court of the county in which such town is located, whenever such desire of the citizens is certified to such incorporate authorities, or judge of the probate court, as the case may be, by a petition signed by a majority of the resident property holders of such town, to enter, at the proper land office, so much of the land that such town may be entitled to under the provisions of the act of congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, as may be actually necessary for the purposes of said town, in trust for the several uses and benefit of the occupants thereof, according to their respective interests: *Provided*, That nothing in this chapter contained shall be so construed as to authorize or empower the said incorporate authorities or probate judge, as the case may be, to enter or to cause to be surveyed, as hereinafter provided, any tract or legal subdivision of land, not actually occupied as a town site, in whole or in part, by the citizens of such town: *Provided further*, That no entry of any town site, under the provisions of this chapter, shall interfere with the prior rights of any person claiming any land under the homestead or pre-emption laws of the United States.

Sec. 1206. The said incorporate authorities or judge of the probate court, as the case may be, shall have full power to do all and singular the several acts and things necessary and appertaining to the entry of said land at the proper land office.

Sec. 1207. And the said incorporate authorities or judge of the probate court, as the case may be, shall, within three months from and after the entry of such town site, unless a survey and an accurate plat thereof has previously been made, cause the same to be surveyed and a plat thereof made, which said survey and plat thereof shall conform as near as may be to the existing rights, interest, and claims of the occupants thereof. Said plat and survey shall be submitted to and accepted by the board of county commissioners in the county where the said town is situated.

Sec. 1208. Such town site shall be surveyed into blocks, lots, streets, and alleys, but no lot shall exceed in area four thousand two hundred square feet; and the plat of such town shall be filed in the office of the county recorder for the county in which such town is situated, and thereafter the streets and alleys designated in such plat shall remain dedicated to public use forever.

Sec. 1209. Immediately after such survey and plat has been made, or if a survey and plat has been made previous to the entry, according to the provisions of section 1207 of this chapter, then immediately after the entry of the lands at the proper land office, as provided in section 1205 of this chapter, the corporate authorities or the probate judge, as the case may be, shall cause a notice to be published in all the newspapers published in such town, or, if no newspaper be published in such town, then by advertisement posted up in twelve of the most public places in such town, for at least two months, giving notice of such entry, and requiring every claimant or claimants of any town lot or lots, to file in the office of such incorporate authorities or probate judge, as the case may be, a statement of his or their claims within two months from the date of the first publication of such notice.

Sec. 1210. Such statement shall be made in writing, signed by the party or parties making the same, and verified by the affidavit of such party or parties, and shall be recorded at length in a well bound book to be provided and kept for such purpose by such incorporate authorities or judge of probate, as the case may be. Such statement shall specify the grounds of such claim, particularly describing the lot or lots claimed, the date as near as may be of the occupation of said lot or lots, and by whom; what improvements have been made on said lot or lots and the value therof; and that such lot or lots are now actually possessed and occupied by such claimant, or that the right to such occupation is in the claimant, if such lot or lots are occupied by another.

Sec. 1211. All claimants of any lot or lots in any town site preempted under the provisions of this chapter, shall, within six months from and after the expiration of the notice mentioned and provided for in section 1209 of this chapter, make proof of such claim and of the facts contained in such statement, before the corporate authorities aforesaid, or the probate judge, as the case may be, and pay the price hereinafter fixed upon such lot or lots; and no proof shall be permitted to be made after the expiration of the time prescribed in this section.

Sec. 1212. The number of lots which any one claimant shall be entitled to pre-empt, under the provisions of this chapter, shall be two, not exceeding in area four thousand two hundred square feet each, and such additional lot or lots upon which said claimant may have substantial improvements of the value of not less than two hundred and fifty dollars. When any claimant shall make application to enter more than two lots, he shall prove, in addition to other matters of proof required by this chapter, to the satisfaction of said incorporate authorities or probate judge, as the case may be, by the affidavit of one or more reliable witnesses, the nature, character and actual cash value of the improvements upon such additional lot so sought to be entered by him.

Sec. 1213. The said probate judge or corporate authorities, as the case may be, shall proceed to award the lot or lots claimed as provided for in this chapter, and for that purpose shall, as soon as practicable, and as near as practicable in the order of time of the filing of statements of claims, examine each and every claim as herein provided, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and, if the same shall be found to comply with the provisions of this chapter, and no conflicting claim shall have been filed, the said probate judge or corporate authorities, as the case may be, shall upon payment of the fees hereinafter prescribed, proceed forthwith to make to such claimant or claimants a good and sufficient deed for such lot or lots.

Sec. 1214. The fees of the probate judge or corporate authorities shall be, in case such claim or claims is not contested, four dollars for hearing the proof and making the deed; and in contested cases, in addition to the four dollars, the same fees as allowed by law in civil cases in justices' courts.

Sec. 1215. In all cases where there is a dispute or contest in regard to the right to the deed to any lot or lots, the probate judge or corporate authorities, as the case may be, shall hear the testimony relating thereto at such time as they may fix therefor; and after two days' notice of such time and place of hearing given to each and every contestant, they shall proceed to hear and decide such claims, in accordance with the principles of right and justice, and the provisions of this chapter; and in case there shall be no appeal taken from such decision, as hereinafter provided, then after ten days from the rendering of such decision, the said probate judge or corporate authorities, as the case may be, shall proceed to make a deed, as provided in section 1213 of this chapter, to the person or persons to whom the lot or lots may have been awarded: *Provided,* The corporate authorities or judge, as the case may be, may adjourn from time to time, as they may deem just, for the fair adjudication of said claim or claims.

SEC. 1216. In case any claimant or claimants of any lot or lots which may have been awarded as provided in the last section shall feel aggrieved by such decision, such claimant or claimants may take an appeal to the district court of the county in which the same is located. Such appeal shall be made by filing with the judge or corporate authorities, as the case may be, a notice in writing of such an appeal, and also a copy of such notice with the clerk of the district court; and a complaint in the nature of an action for the recovery of the possession, or if the party be in possession, to establish his right to the same; and a copy of such notice and complaint shall be served upon each and all of the parties contesting; and in all respects, the pleadings and proceedings thereafter shall be governed by the same rules applicable to actions originally commenced in the district court.

SEC. 1217. When notice of appeal to the district court shall have been filed with the probate judge or corporate authorities, as the case may be, the power to make a deed as provided in section 1213 of this chapter, shall be suspended until the appeal be dismissed or finally determined; and, upon such dismissal or final determination, such judge or corporate authorities aforesaid shall make a deed to the party found by such determination to be entitled thereto.

SEC. 1218. Each claimant shall deposit with the probate judge or corporate authorities, as the case may be, at the time of filing his statement, as aforesaid, the sum of ten dollars for each lot claimed, as the purchase money thereof, which shall be immediately deposited with the county treasurer, if the probate judge be the trustee, and with the city treasurer if the corporate authorities be the trustee.

SEC. 1219. For the purpose of raising funds to defray the expenses incurred in entering, surveying, and platting said town site, the probate judge or corporate authorities, as the case may be, are hereby authorized and empowered to borrow money at the customary rate of interest, and draw his or its draft upon the county or city treasurer, as the case may be, for such amount, which shall be paid out of the money received as the purchase price of lots, as hereinbefore provided, which said funds are hereby pledged and set apart to be applied for this purpose.

SEC. 1220. The residue or lots in the possession of the corporate authorities or probate judge, as the case may be, and unclaimed after the expiration of sixty (60) days, it shall be the duty of the probate judge or corporate authorities, as the case may be, to post up notices, or cause the same to be done, in at least four public places in the county in which such town site is located, at least ten days before sale, that he will offer and sell at public sale all of, or so many as he may think proper, of the lots that may remain unclaimed at the time advertised; and that all lots, having been thus advertised and offered for sale, not bringing at least the minimum price as set forth in an act of which this is amendatory, shall be subject, at any time thereafter, to private entry at the minimum price.

SEC. 1221. That whenever the term of office of any officer authorized by this chapter to make entry of a town site shall expire, or he shall resign or be removed from office, he shall turn over all books and papers relative to such entry to his successor in office, and thereafter the said trust shall be discharged in every particular by such successor.

SEC. 1222. It shall be the duty of the corporate authorities or county judge, as the case may be, when any town site has been located and surveyed under the provisions of this chapter, upon the petition of ten resident householders of said town site, to locate and set apart, by and with the advice and approval of the board of school directors of the district in which said town site may be located, a site for a district school, not more than one acre, and the said county judge or corporate authorities shall convey by deed to said board of directors the lots included in said location, and said board shall manage the same as other school property of the district is managed. And upon the petition of twenty resident householders, as aforesaid, the probate judge or corporate authorities, with the advice and approval of the county superintendent of the county in which said town site is located, shall set apart a site for a college or university, not to exceed twenty acres, and the said location shall be held in trust by the county judge or corporate authorities for said college or university: *Provided*, Said locations shall not include any lot held by a *bona fide* claimant, nor interfere with vested rights.

SEC. 1223. That if any portion of said city or town shall fall upon surveyed public lands, which have hitherto been occupied and improved by any person or persons holding and occupying the same in good faith, prior to the passage of said act entitled "An act relative to the pre-emption of town sites upon public lands, and the disposal of trusts created thereby," it shall be the duty of the corporate authorities or probate judge, as the case may be, if the petition aforesaid shall have been presented to him in pursuance of the provisions of said act, to enter said land in conformity to the legal subdivisions thereof, as authorized by act of congress of the second of March, 1867, and an act to amend the same, approved June 8, 1868, and, upon the payment to him of the price paid in entering the same, and such other costs and expenses as are necessarily incurred by virtue of the provisions of this chapter, to make and deliver to the said occupant or occupants, as the case may be, a good and sufficient deed for the ground occupied by them.

SEC. 1224. That section 1210 of this chapter be so construed as to embrace and apply to only such portion of any legal subdivision as shall be outside of the limits of ground actually occupied by the inhabitants of such town.

NOTE.—Act January 12th, 1872.

CHAPTER LXVIII.

WEIGHTS AND MEASURES.

Sec. 1225. *Lawful standard of weights and measures.*
Sec. 1226. *Definition of weight of "ton."*
Sec. 1227. *Weight of a bushel.*

Sec. 1228. *Duties of county commissioners and treasurer.*
Sec. 1229. *Weights and measures to be compared with standards.*
Sec. 1230. *Appointment of inspector; bond.*
Sec. 1231. *Fees of inspector; how regulated.*
Sec. 1232. *Inspector to provide tools, marks, etc.*
Sec. 1233. *Penalty for using other than standard weights and measures.*
Sec. 1234. *Violation of this act; duty of inspector.*
Sec. 1235. *Appropriation of fines.*

SEC. 1225. That the weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, shall be deemed the lawful standard weights and measures of the people of this Territory.

SEC. 1226. The "ton" shall be twenty hundred pounds weight avoirdupois, except in the article of mineral coal, when it shall be deemed to express the conventional quantity of twenty-eight bushels.

SEC. 1227. Sixty pounds of wheat, fifty-six pounds of rye, fifty-six pounds of Indian corn, forty-eight pounds of barley, thirty-five pounds of oats, sixty pounds of potatoes, sixty pounds of beans, sixty pounds of clover seed, forty-five pounds of timothy seed, forty-four pounds of hemp seed, fifty-two pounds of buckwheat, fourteen pounds of blue-grass seed, fifty pounds of corn meal, fifty-seven pounds of onions, and fifty pounds of turnips, carrots, beets, and parsnips each, salt, fifty pounds, respectively, shall be the standard weight of a bushel of each of such articles.

SEC. 1228. It shall be the duty of the board of county commissioners of the several counties of this Territory to provide and adopt a temporary standard of weights and measures, until such time as they shall be notified of the arrival and acceptance of the standard to be furnished by the government of the United States to the treasurer, as provided in said section.

SEC. 1229. That all venders and traders in goods and merchandise, gold dust, and other articles of traffic, shall, within sixty days after the reception of the standard by said county commissioners, have their balances, weights and measures compared with said standards of their respective counties, and approved and marked by the county inspector, and if the same are found to be correct to be sealed with the name or initial letters of the county inscribed thereon, or condemned by him if found incorrect.

SEC. 1230. That on the first regular meeting of the board of county commissioners in each county in this Territory after the passage of this chapter, and thereafter annually on the first regular monthly meeting of every year, said county commissioners shall appoint a fit and proper person, who shall be styled "inspector of weights and measures," and give bond to the county for the faithful performance of the duties of his office, as said county commissioners may direct.

SEC. 1231. That every board of county commissioners shall make out a list of fees to be charged by said inspector. Such fees shall be recoverable as other debts of like amount.

SEC. 1232. That it shall be the duty of such inspector to provide, at his own expense, all the necessary tools, marks, and brands which he may require, and by reason thereof he shall receive no larger fee than he may be allowed in accordance with the preceding. Said fees shall be paid by the parties having weights and measures sealed and approved.

Sec. 1233. All persons who shall, after the expiration of the time before mentioned, in any county where such inspector shall have been appointed, use within this Territory, for the purpose of weighing or measuring any goods, wares, merchandise, gold dust, or other article of traffic actually sold by him, any weights or measures which shall not be approved and sealed by the inspector, shall be guilty of a misdemeanor, and, upon conviction thereof, may be imprisoned not exceeding one year, or fined not exceeding one thousand dollars, in the discretion of the court in which the conviction shall be obtained.

Sec. 1234. Whenever it shall come to the knowledge of the inspector that any person or persons within his county have violated any of the provisions of this chapter, it shall be his duty to enter a complaint against him or them before some court of competent jurisdiction, to the end that the offender may be punished and fined according to law.

Sec. 1235. All fines imposed and collected for violation of the provisions of this chapter shall be paid into the county treasury for the use of the people of the county in which the offence has been committed.

Note.—Act January 12th, 1872.

CHAPTER LXIX.

WOOLEN FACTORIES.

Sec. 1236. *First factory exempt from taxation.*
Sec. 1237. *Term "woolen factories" defined.*
Sec. 1238. *Notice of intention to erect.*
Sec. 1239. *Preference given to party first filing notice of intention to erect.*

Sec. 1236. The first woolen factory that shall be erected and operated in the Territory of Montana of proper construction and sufficient capacity for the production of flannels and blankets, shall be exempt from all taxation for the term of six years from the date of the completion of such factory; the said factory shall be deemed completed at the time of manufacturing the first fabric.

Sec. 1237. The term "woolen factories," used in this chapter, is hereby defined to include and embrace the building or buildings and lands connected therewith, together with all machinery used in or about the same, or in anywise necessarily connected therewith, and all water rights, ditches, flumes, reservoirs, and all stock on hand unsold, whether the same be raw or manufactured.

Sec. 1238. That any person or corporation filing with the auditor of the Territory the first notice of his or their intentions to erect and operate a woolen factory within two years from the date of filing said notice, shall have the term of six months from the time of filing the notice aforesaid to complete arrangements and obtain the necessary machinery for the erection of said factory; and at or before the expiration of the said six months said person or corporation shall commence the erection of said factory and shall prosecute the work thereupon with due diligence until the same shall be completed.

SEC. 1239. Any person or corporation that shall first file the notice provided for in section 1238 of this chapter, and shall proceed to erect and complete said factory in manner provided therein, this chapter shall have the effect to give preference to such person or corporation under this chapter for the term of six months after the date of filing the aforesaid notice.

NOTE.—Act February 14th, 1877.

CHAPTER LXX.

REPEAL PROVISIONS.

Sec. A. What the revised statutes embrace.
Sec. B. Repeal of acts embraced in revision.
Sec. C. Accrued rights reserved.
Sec. D. Prosecutions and punishments.
Sec. E. Acts of limitation.
Sec. F. Arrangement and classification of sections.
Sec. G. Acts passed since February 21st, 1879, not affected.

SEC. A. The foregoing five divisions, to-wit: First division, entitled "CODE OF CIVIL PROCEDURE;" second division, entitled "PROBATE PRACTICE ACT;" third division, entitled "CRIMINAL PRACTICE ACT;" fourth division, entitled "CRIMINAL LAWS," and fifth division, entitled "GENERAL LAWS," embrace the Statutes of the Territory of Montana, general and permanent in their nature, in force on the twenty-first day of February, A. D. one thousand eight hundred and seventy-nine, as codified and arranged pursuant to act of the legislative assembly, and the same shall be designated and cited as "THE REVISED STATUTES OF MONTANA."

SEC. B. All acts of the legislative assembly passed prior to said twenty-first day of February, one thousand eight hundred and seventy-nine, or on said day, any portion of which is embraced in any section of said codification, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof, all parts of such acts not contained in such codification, having been repealed or superceded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into said codification of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local or temporary character, shall not repeal or in any way affect any appropriation, or any provision of a private, local or temporary character contained in any of said acts, but the same shall remain in force; and all acts of the legislative assembly, passed prior to or on said last named day, no part of which are embraced in said codification, shall not be affected or changed by its enactment.

SEC C. The repeal of the several acts embraced in said codification shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before the said repeal; but all rights and liabilities under said acts shall continue and may be enforced in the same manner as if said repeal had not been made; nor shall said repeal in any manner affect the right to any office, or change the term or tenure thereof.

SEC. D. All offences committed, and all penalties or forfeitures incurred, under any statute embraced in said codification prior to said repeal, may be prosecuted and punished in the same manner, and with the same effect, as if said repeal had not been made.

SEC. E. All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offences, or for the recovery of penalties or forfeitures embraced in said codification, and covered by said repeal, shall not be affected thereby, but all suits, proceedings or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

SEC. F. The arrangement and classification of the several sections of the codification have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the title, title of the chapter, or title of the article under which any particular section is placed.

SEC. G. The enactment of the said codification is not to affect or repeal any act of the legislative assembly passed since the twenty-first day of February, A. D. one thousand eight hundred and seventy-nine, and all acts passed since that date are to have full effect as if passed after the enactment of this codification; and so far as such acts vary from, or conflict with, any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the codification inconsistent therewith.

[NOTE BY THE SECRETARY OF MONTANA.—The foregoing act, having been presented to the governor of Montana Territory on the twenty-fifth day of January, A. D. 1881, for approval, and not having been returned by him to that house of the legislative assembly in which it originated within the time prescribed by section 1842, Chapter I, Title XXIII, Revised Statutes of the United States, has become a law without his approval.]

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